

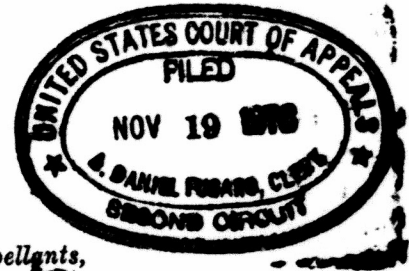
***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7454-7480

**United States Court of Appeals
FOR THE SECOND CIRCUIT**



BIG SEVEN MUSIC CORP. and ADAM VIII, LTD.,

Plaintiffs-Appellants,

against

**JOHN LENNON, APPLE RECORDS, INC., HAROLD SEIDER,
CAPITOL RECORDS, INC. and EMI RECORDS LIMITED,**

Defendants-Appellees,

and

MORRIS LEVY,

Additional Defendant on Counterclaim-Appellant.

B
P/S

**JOINT APPENDIX
VOLUME I—Pages 1a to 269a**

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BIG SEVEN MUSIC CORP., et al vs. LEMMON, JOHN, et al

75 Civ 1118

Page #1

JUDOR MAC MAHON

DATE	NR.	PROCEEDINGS
03-06-75	1	Filed Complaint and Issued Summons.
03-11-75		Filed Clerk's Certificate of Mailing of summons & complt to: EMI Recors Ltd. 20 Manchester square London, England W1 Reg. Recpt. #242548
03-28-75		Filed Stip & Order extending to 4-4-75 for defts (Capitol) to move or answer re complt.....MAC MAHON,J
04-04-75	(4)	Filed Stip & Order extending to 8-11-75 for defts (Apple Records) to move or answer re complt.....MAC MAHON,J
04-4-75	(5)	Filed Stip & Order extending to 4-11-75 for debt (Capitol Records) to move or answer re complt.....MAC MAHON,J
04-4-75	(6)	Filed Stip & Order extending to 4-11-75 for debt (EMI Records) to move or answer re complt.....MAC MAHON,J
04-8-75	(7)	Filed plttfs notice to take deposition of debt (Capitol Records)
04-8-75	(8)	Filed plttfs notice to take deposition of debt (Apple Records)
04-11-75	(9)	Filed ANSWER of EMI Records to complt.
04-11-75	(10)	Filed ANSWER of debt Capitol Records.
04-11-75	(11)	Filed Stip & Order adjourning to a further date for deposition re Capitol Records.....MAC MAHON,J
4-16-75	(12)	Filed Stip. & Order that the time for debt. Apple Records. to answer the complt. is ext. to 4-30-75.....MacMahon,J.
4-16-75	(13)	Filed Stip & Order re deposition of debt (Apple Records)...& adjournment to a later date.....MAC MAHON,J
5-1-75	(14)	Filed ANSWER to complt by debt (Apple Records.) Iss. summons. CCS
5-2-75	(15)	Filed Stip & Order of substitution of counsel for debt Apple Records MAC MAHON,J
5-1-75	(16)	Filed debt (EMI Records) amended answer to the complt & countercl
5-1-75	(17)	Filed debt (Capitol Records) amended answer & counterclaim.
5-5-75	(18)	Filed return receipt of mailing #242548.
5-7-75	(19)	Filed summons & Marshal's returns. Harold Seider John Lennon Apple Records John Lennon Capitol Records Harold Seider

Served:
By: Not Served
J.M. Bergen 4-17-75
V. Colvell 3-10-75
Not Served
Nancy Duryee 3-7-75
Not Served

Relevant Docket Entries.

1116 BIG SEVEN MUSIC CORP. vs JOHN LENNON, et al

FILE DOCKET

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JUDGE [REDACTED]

DATE	FILINGS—PROCEEDINGS	PLAINTIFF	DEFENDANT	ANSWER RESPONSE EMULATED RETURN
May 8-75	Filed affdvt & Order appointing process server....	Clerk		
May 9-75	Filed ANSWER & counterclaim of deft (Lennon).			
May 13-75	Filed Addt'l summons & Marshal's return.	Served:		
	Morris Levy	By: Karen Grasso	5-6-75	
May 13-75	Filed additional summons & Marshal's return.	Served:		
	Morris Levy	By: Karen Grasso	5-6-75	
May 22-75	Filed plttfs reply to counterclaim of Apple Records.			
May 22-75	Filed plttfs reply to counterclaim of EMI Records.			
May 22-75	Filed plttfs reply to counterclaim of Capitol Records.			
May 22-75	Filed plttfs reply to counterclaim of John Lennon.			
May 22-75	Filed addt'l deft on counterclaim (Levy) answer to counterclaim of Apple Records.			
May 22-75	Filed addt'l deft on counterclaim (Levy) answer to counterclaim of EMI Records.			
May 23-75	Filed addt'l deft (Levy) answer to counterclaim of John Lennon.			
May 23-75	Filed addt'l deft on counterclaim (Levy) answer to counterclaim of Capitol Records.			
May 29-75	Filed deft & Counterclaimant (Capitol Records) demand for trial by jury of its counterclaim herein.			
May 29-75	Filed defts (Capitol & EMI Records) notice to take deposition of plttf Adam VIII, plttf Big Seven Music, & counterclaim deft Morris Levy.			
Jun.2-75	Filed deft Apple Records & counterclaimant demand for jury trial.			
Jun.4-75	Filed demand for jury trial by deft & counterclaimant John Lennon.			
Jun.10-75	Filed plttfs notice to take deposition of deft (Capitol Records).			
Jun.10-75	Filed by addt'l deft on counterclaim (Morris Levy) demand for jury trial.			
7-3-75	Filed addt'l summons with Marshal's return.	Served:		
	Harold Seider	By: P S	6-27-75	
7-1-75	Filed plttfs notice to take deposition of May Pang, as a witness.			
	Issued subpoena.			
7-16-75	Filed plttfs notice to take deposition of Bernard Brown., Issued subpoena.			
7-21-75	Filed plttfs notice to take deposition of Bernard Brown.			
7-18-75	Filed ANSWER to complt by deft (Seider).			
7-23-75	Filed defts (Cap. Records, EMI Rec. Ltd.) notice to take deposition of Allen Klein. Subpoena issued			

Relevant Docket Entries.

75 Civ 1116 BIG SEVEN MUSIC CORP. -v- JOHN LENNON, et al

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Page #3

MAC

DATE	FILINGS—PROCEEDINGS	CLERK'S FEE		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
7-25-75	Filed defts (Capitol & EMI) deposition subpoena with return re			Allen Kl
7-31-75	Filed Document Request of Apple Records Inc to Big Seven Music etc.			
7-31-75	Filed Interrogs of Apple Records Inc to Big Seven Music Corp etc.			
8-5-75	Filed by defts (Capitol & EMI) interrogs to pltffs & Morris Levy, interrogs & request for production of documents.			
8-5-75	Filed defts (Capitol & EMI) notice to take deposition of Bernard Brown.			
8-6-75	Filed Stip & Order that deposition of Bernard Brown is adj. to 9-17-75 with conditions, as indicated. If Bernard Brown cannot appear for his deposition on that date for good cause shown & pltffs do not agree upon a reasonable date, the matter shall be submitted to the Court for proper resolution.....MAC MAHON, J			
8-6-75	Filed Stip & Order that deposition of Bernard Brown shall be recorded by videotape & stenographic means pursuant to Rule 30(b)(4) of the FRCP.....MAC MAHON, J			
8-8-75	Filed pltffs notice to take deposition of Scott Muni. Subpoena Issued.			
8-8-75	Filed pltffs notice to take deposition of deft EMI Records by Len Wood.			
8-18-75	Filed deft (EMI) notice of motion to quash notice to take deposition by pltff of deft (EMI.) Rec. 8-22-75.			
8-20-75	Filed pltffs & addt'l deft (Levy) affdvt in opposition to deft (EMI'S) motion to quash.			
8-20-75	Filed pltffs memo of law in opposition to deft (EMI'S) motion to quash.			
8-25-75	Filed deft (EMI's) reply memo in support of its motion to quash.			
8-25-75	Filed Memo-End on motion of 8-18-75. Motion granted. Pltff shall proceed in the first instance to take the deposition of E.M.I. by Mr. Len Wood upon written questions & shall so proceed within ten (10) days.....MAC MAHON, J m/n			
8-29-75	Filed by defts (Capitol Records & EMI) notice of entry of order of 8-25-75.			
8-29-75	Filed pltffs interrogs to deft (Capitol Records) - First set.			
8-29-75	Filed pltffs interrogs to deft (Apple Records) - First set.			
8-29-75	Filed pltffs interrogs to deft (EMI Records) - First set.			
9-3-75	Filed Stip & Order extending to 9-12-75 for pltffs & addt'l deft on court claim to serve answers or objections to interrogs of (Apple.), & extending to 9-15-75 for them to comply or respond to document request of (Apple.) If (Apple) serves a second set of interrogs by 9-22-75, pltff & addt'l deft on counterclaim will serve answers objections by 10-13-75, etc.....MAC MAHON, J			
9-5-75	Filed pltffs notice to take depositions of EMI Records Ltd.			

///////// Con't on Page #4

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BIG SEVEN MUSIC CORP.

-v- JOHN LENNON, et al

75 Civ 1116

Page 14

DATE

PROCEEDINGS

JUDGE

9-5-75 Filed pltf's interrogatories re deft (Lennon). - First set.

9-9-75 Filed Stip & Order extending to 9-12-75 for pltf's & add'l deft (Levy) to respond to deft (Capitol) interrogatories....
MAC MAHON, J

9-10-75 Filed defts (Lennon & Salder) request for production of documents

9-12-75 Filed responses & objections of pltf's & Morris Levy to deft (Apple Record's) first set of interrogatories.

9-12-75 Filed responses & objections of pltf's & Morris Levy to deft (Capitol Records) interrogatories.

9-17-75 Filed pltf's & Morris Levy responses & objections to Capitol Records request for documents.

9-17-75 Filed pltf's & Levy's responses & objections to Apple Record's request for documents.

9-25-75 Filed deft (Apple Records) request pltf's & Morris Levy for production & inspection of documents.

9-25-75 Filed interrogatories of deft (Apple Records) to pltf's & Morris Levy to answer or object to its interrogatories.

10-1-75 Filed Stip & Order that time for defts (Capitol & EMI Records) to file responses & objections be extended & considered timely if mailed Air Express to pltf's from London by 10-4-75, & also re any motion made by pltf in connection with responses & objections, etc.....MAC MAHON, J

10-6-75 Filed deft (Capitol Records) responses & objections to pltf's first set of interrogatories. (Exhibits in two volumes included).

10-7-75 Filed deft (John Lennon) answers & objections to pltf's interrogatories (First set).

10-7-75 Filed notice of deft (Apple Records) to take depositions of certain witnesses as listed. Two subpoenas issued.

10-7-75 Filed Stip & Order that time for deft (Apple Records) to file responses & objections is extended to noon 10-6-75. If pltf files a motion re responses & objections by 10-15-75, deft (Apple) shall not object if return date is after 10-15 etc.....MAC MAHON, J.

10-8-75 Filed defts (Apple Records) responses & objections to pltf's interrogatories. (First set)

10-9-75 Filed Pltf's Notice to take deposition of A. Jenkins. --- Subp Iss.

10-9-75 Filed " " " " " " " K. Acher " " "

10-9-75 Filed Deft. EMI's Responses and Objections to pltf's 1st set of Interrogatories.

10-14-75 Filed pltf's & (Levy's) responses & objections to defts (Lennon & Salder's) request for documents.

10-14-75 Filed pltf's & (Levy's) responses & objections to deft (Apple)

10-16-75 Filed deposition of Bernard Laurence Brown.

10-17-75 Filed pltf's amended complt, with jury trial demand.

10-20-75 Filed pltf's & Levy affdvt & Show Cause Order for leave to file & serve an amended complt. Ret. 10-16-75.....MAC MAHON, J.

10-20-75 Filed Memo-End. on Show Cause Order of 10-20-75. The Within motion to amend the complt is granted, & is to be served forthwith & answers to be served & filed within five (5) days after service of amended complt.....So Ordered,
MAC MAHON, J m/n

10-20-75 Filed pltf's & Levy affdvt & Show Cause Order extending discovery completion date to 11-14-75. Ret. 10-16-75, MAC MAHON, J.

10-20-75 Filed pltf's memo of law in support of their motion for leave to amend the complt.

Relevant Docket Entries.

75 Civ 1116 BIG SEVEN MUSIC CORP., et ano -v- JOHN LENNON, ET AL

Page #3

DATE	PROCEEDINGS
10-20-75	Filed pliffs memo of law in support of their motion to enlarge the per for discovery.
10-20-75	Filed Memo-End. on Show Cause Order for enlargement of time for discovery. The within motion is granted to the following extent. Parties to complete all discovery by 11-15-75. Pre-trial briefs & requests to charge to be filed by 11-7-75. This case to be added to the Court's ready trial calendar on or after 11-17-75, to be called for trial on short telephic notice after publication of the Court's trial calendar in the New York Law Journal.....So Ordered, MAC MAHON, J m/p
10-21-75	Filed by pliff notice of entry of endorsement order of 10-20-75.
10-21-75	Filed pliffs notice to take deposition of Edward S. Hottan. Subp. Iss
10-21-75	Filed pliffs notice to take deposition of Ken Ascher. Subpoena issued.
10-21-75	Filed pliffs notice to take deposition of Roy Cicala. Subpoena issued.
10-21-75	Filed pliffs notice to take deposition of James Iovina. Subpoena issued.
10-21-75	Filed deposition of Leonard George Wood taken on behalf of the pliffs in London, England.
10-23-75	Filed deft (Apple Records) notice to take deposition of (Media Sound). Issued subpoena.
10-23-75	Filed second amended answer & counterclaims of (EMI Records).
10-23-75	Filed second amended answer & counterclaims of (Capitol Records.)
10-28-75	Filed answer to amended complt & counterclaim of (Apple Records).
10-29-75	Filed deft & counterclaimant (John Lennon) demand for jury.
10-29-75	Filed deft (Lennon) answer to amended complt of (Big Seven & Adam VIII & for his counterclaim.
10-29-75	Filed deft (Seider's) answer to the amended complt. of Big Seven & Adam VIII.
10-29-75	Filed addt'l deft (Levy) answer to counterclaims of deft (EMI Records)
10-29-75	Filed pliffs (Big Seven & Adam VIII) reply to counterclaims of deft (EMI Records).
10-29-75	Filed pliffs reply to counterclaims of deft (Capitol Records).
10-29-75	Filed addt'l deft (Levy) answer to counterclaims of deft (Capitol R.)
10-31-75	Filed deft (Apple Records) notice of motion for reargument of two Orders dtd 10-16- & 10-20-75. Ret. 11-7-75
10-31-75	Filed deft (Apple) affdvt in support of motion for reconsideration.
10-31-75	Filed defts joint memorandum in support of motion for reconsideration.
11-3-75	Filed addt'l deft (Levy) answer to counterclaims of deft Lennon.)
11-3-75	Filed addt'l deft (Levy) reply to counterclaim of deft (Apple Records)
11-3-75	Filed pliffs (Big Seven & Adam VIII) reply to counterclaim of (Apple).
11-3-75	Filed pliffs (Big Seven & Adam VIII) reply to counterclaims of (Lennon)
11-3-75	Filed pliffs (Big Seven & Adam VIII) demand for jury trial on the counterclaims.
11-3-75	Filed addt'l deft (Levy) demand for jury trial on counterclaims.
10-31-75	Filed deft (Seider) amended answer to amended complt of pliffs.
10-31-75	Filed deft (Lennon) amended answer to pliffs amended complt. & counterclaim.
11-5-75	Filed pliffs memo in opposition to defts motion for reargument.
10-30-75	Filed defts (Capitol & EMI Records) notice to take deposition of of Lou Garlick. Subpoena issued
11-5-75	Filed deft (Apple Records) jury demand re counterclaim.
11-7-75	Filed deft (Apple Records) requests to charge.
11-7-75	Filed defts joint statement of facts disputed & not disputed.
11-7-75	Filed deft (Apple Records) trial brief.

Con't on Page #6

1116

BIG SEVEN MUSIC CORP.

-v-

JOHN LENNON, et al

Page 46

PROCEEDINGS

JUDGE GRIESA

JUDGE M. J. GRIESA

11-7-75 Filed pliffs statement of disputed & undisputed facts.
 11-7-75 Filed pliffs request to charge.
 11-7-75 Filed pliffs pre-trial memorandum.
 11-7-75 Filed deft on counterclaim (Levy) answer to counterclaims of deft (Lennon).
 11-7-75 Filed pliffs reply to counterclaims of deft (Lennon).
 11-7-75 Filed deft & counterclaimant (Capitol Records) demand for a jury trial of its counterclaims.
 11-7-75 Filed deft (EMI) & counterclaimant demand for a jury trial of its counterclaim.
 11-13-75 defts (Capitol Records & EMI) request to charge.
 11-13-75 Filed defts (Capitol Records & EMI) trial brief.
 11-13-75 Filed trial memorandum of deft & counterclaimant (Lennon) & deft (Seider).
 11-13-75 Filed proposed jury instructions submitted by deft & counterclaimant (Lennon).
 11-13-75 Filed proposed jury instructions submitted by deft (Seider).
 11-12-75 Filed deposition of Bernard Lawrence Brown.
 11-17-75 Filed Memo-End. on motion of 10-31-75. Motion for reargument granted, & upon reargument the Court adheres to its original decision.....So Ordered, MAC MAHON, J. m/n
 11-25-75 Filed Stip & Order re discovery proceedings conducted & bills of particulars served in the action entitled as indicated, etc.....MAC MAHON, J.
 12-8-75 Filed pliffs notice to deft (Apple Rec.) to produce documents, at trial.
 12-8-75 Filed pliffs notice to deft (EMI Rec.) to produce documents, at trial.
 12-8-75 Filed pliffs notice to deft (Capitol Rec.) to produce documents, at trial.
 12-8-75 Filed pliffs notice to deft (Seider) to produce documents at trial.
 12-8-75 Filed pliffs notice to deft (Lennon) to produce documents at trial.
 12-8-75 Filed deposition of Ivy Hill Communications.
 12-9-75 Filed deposition of Allen Klein.
 12-9-75 Filed marked pleadings of pliffs & Levy.
 12-9-75 Filed deft (Apple Rec.) notice to pliffs & add'l deft on counterclaim to produce documents at trial.
 12-10-75 Filed deposition of Bell Sound Studios dtd 10-14-75.
 12-10-75 Filed deposition of Mediasound, Inc. dtd 11-5-75.
 12-10-75 Filed deposition of Media Sound dtd 10-14-75.
 12-12-75 Motion to quash subpoena. Denied.
 12-23-75 Filed Stip & Order that the motions of all parties re subpoenas duces tecum requiring production of documents at trial are withdrawn as set forth in the annexed letters.....MAC MAHON, J.
 1-6-76 Filed deft's (Apple) exceptions & amendments to statement of fact.
 1-9-76 Filed pliffs questions for prospective jurors.
 1-9-76 Filed pliffs reply memorandum re defts pretrial memoranda.
 01-16-76 CASE REASSIGNED TO GRIESA, J.
 01-22-76 Filed deposition of deft. John Lennon taken on 5-6-75.
 01-22-76 Filed continued deposition of John Lennon taken on 5-7-75.
 02-02-76 Filed deposition testimony of Levy and Dahl omitted from defts' compilation of pliffs' pretrial testimony.
 02-20-76 Filed Opinion # 43919-- for the reasons stated, I conclude, on the basis of the evidence about the 10-8-74 meeting and on the basis of all the other relevant evidence, that no contract was entered into by Lennon or Apple granting Levy or one of his companies the right to produce and distribute Lennon's rock and roll album. In view of the above ruling, it is unnecessary to discuss the Statute of Frauds issue raised by the defts. GRIESA, J. (s/n)

Relevant Docket Entries.

(PAGE # 7)

DATE	PROCEEDINGS
03-05-76	Filed pliffs' and Levy's memorandum of law in support of their defense that defts. have failed to state a claim for relief under section 43 (a) of the Lanham Act, 15 U.S.C. S. 1125(a)
03-05-76	Filed defts. Capitol Records, Inc. and EMI Records Limited memorandum in support of award of attys' fees on counterclaims.
03-05-76	Filed defts. Capitol Records, Inc. and EMI records, Inc. affidavit of E. Harrett Prettyman, Jr. in support of award of attys' fees.
03-08-76	Filed deft. Apple Records, Inc. affidavit of George J. Grumbach, Jr. in support of counsel fees for said deft.
03-11-76	Filed memorandum of pliffs. and Levy in opposition to defts. Capitol's and EMI's application for attys' fees.
3-12-76	Filed transcript of record of proceedings, dated Jan. 22, 23, 26, 27, 1976; Jan. 28, 76
3-12-76	Filed transcript of record of proceedings, dated Jan. 14, 15, 16-76; Jan. 20, 21-76
3-12-76	Filed transcript of record of proceedings, dated Jan. 29, 30-76; Feb. 5, 27-76
03-15-76	Filed memorandum of pliff. Big Seven Music Corp. in opposition to deft. Lennon's motion to dismiss.
03-15-76	Filed response of pliffs and Levy to deft. Lennon's memorandum on his claims under the New York Civil Rights Law.
03-11-76	Filed transcript of record of proceedings, dated 1-12, 1-13-76
04-15-76	Filed deft. John Lennon affidavit of James M. Bergen in support of said deft's application for reasonable attys' fees.
04-22-76	Filed transcript of record of proceedings, dated 4-15-76
04-30-76	Filed memorandum of deft. John Lennon as to pliff. Big Seven's failure of proof.
05-05-76	Filed deft. John Lennon affidavit of James M. Bergen re: pliff. "Big Seven" claim that Lennon breached the Oct. 1973 agreement and with respect to this claim the purpose of this affidavit is to make these facts part of the record.
05-07-76	Filed pliffs. and additional deft. Morris Levy affidavit of Alan Kanzer in response to deft. John Lennon affidavit relating to the question of whether Maxine Brown recorded "Angel Baby"
06-02-76	Filed pliff. Big Seven's memorandum of law in support of its position that parole evidence is inadmissible to explain the clear and unambiguous term "next album" as used in the stipulation of settlement dated 10-12-73
06-03-76	Filed memorandum of deft. John Lennon as to admissibility of evidence on meaning of the term "next album".
07-01-76	Filed transcript of record of proceedings, dated 3-17, 18, 30, 31-76; 4-1-76
07-01-76	Filed transcript of record of proceedings, dated 4-7, 8, 14, 15, 21-26-76
07-01-76	Filed transcript of record of proceedings, dated 5-28-76
07-13-76	Filed Opinion No. 44746 - for the reasons stated. Big Seven is entitled to judgment against Lennon in the amount of \$6,795, with interest from 2-15-75, on its claim for compensatory damages for breach of contract. Lennon is entitled to judgment against Big Seven dismissing the claims for punitive damages and specific performance. Settle Judgment. GRIESA, J. Notified B.A.
07-30-76	Filed pliff. Adam VIII and deft. on counterclaim Morris Levy affidavit and notice of motion for an order pursuant to Rule 52 (b) and 59(a) FRCP vacating or modifying this Court's findings and conclusions with respect to deft's counterclaims or for a new trial. Ret. 8-2-76
07-30-76	Filed pliff. Adam VIII and deft. on counterclaim Morris Levy memorandum of law in support of their motion pursuant to Rules 52(b) and 59(a) FRCP
08-03-76	Filed deft. John Lennon affidavit of Howard P. Roy in opposition to motion of pliff. Adam VIII, Ltd. and deft. on counterclaim, Morris Levy to amend findings or for a new trial.
08-05-76	Filed deft. John Lennon affidavit of Howard P. Roy in opposition to motion to amend findings or for a new trial.

(CONT'D - PAGE # 8)

Relevant Docket Entries.

CIV. 1116--- BIG SEVEN MUSIC CORP, et al. vs. JOHN LENNON, et al. CIV. 11

(PAGE # 8)

(GRIESA, J.)

U. S. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
08-05-76	Filed defts. Capitol Records, Inc. and EMI Records Limited memorandum in opposition to motion for amended findings or new trial
08-05-76	Filed pliffs. and additional deft. on counterclaim affdvt. of Alan Kanzer in opposition to the judgment proposed by defts. John Lennon and Harold Seider
08-05-76	Filed pliffs. and additional deft. on counterclaim memorandum of law in opposition to the judgment proposed by defts. John Lennon and Harold Seider.
01-14-76	BEFORE GRIESA, J. NON- JURY BEGUN and cont'd 1-15, 1-16, 1-20, 1-21, 1-22, 1-23, 1-26, 1-27, 1-28, 1-29, 1-30-76 and adjourned to 03-17-76
03-17-76	trial cont'd, 03-18, 03-30, 03-31-76
04-01-76	trial cont'd, 04-07, 04-08, 04-11, 04-15, 04-21 and
04-26-76	trial cont'd and concluded (total-23 days).. Judge's decision- see Judgment signed & dated 8-6-76
08-09-76	Filed Judgment No. 76,761. that pliffs Big Seven Music Corp and Adam Ltd. take nothing with respect to counts I thru VIII of the amended complaint & that claims asserted in each of said counts by Pliffs, the claims for punitive damages & specific performance asserted by Seven Music Corp. with respect to Come Together Settlement Agreement are Dismissed on the merits and that neither Pliffs nor the additional deft on counterclaims, Morris Levy, recover their costs of this action. On its counterclaims & ea of them, the deft Capital Records, Inc. recover of pliff Adam VIII Ltd. & additional deft on counterclaims Morris Levy, jointly & severally \$227,000 in compensatory damages & \$10,000 punitive damages, for total award of \$237,000 with interest, as indicated on its counterclaims & ea of them, deft EMI Records, Limited recover Pliff Adam VIII & additional deft on counterclaims Morris Levy, jointly & severally \$27,500 in compensatory damages & \$10,000 in punitive damages for total award of \$37,500 with int. as indicated, on his counterclaims & each of them the deft John Lennon recover of Pliff Adam VIII, Ltd. & additional deft on counterclaims Morris Levy, jointly & severally \$135,300 in compensatory damages (\$35,000 of said amt. awarded on John Lennon's counterclaim & \$10,000 in punitive damages for total award of \$145,300 with int. as indicated., deft Apple Corp. Inc. take nothing from pliffs or additional deft on counterclaims Morris Levy, Pliff Big Seven Music Corp recover of deft John Lennon claim for breach etc. compensatory damages only in amt of \$6,195- int as indicated, Pliffs & additional deft on counterclaims Morris etc. are restrained, etc. as indicated. GRIESA, Judgment Entered on: 8-10-76 RAYMOND F. BURGHARDT, CLERK. M-D
08-17-76	admonition of record of proceedings, dated 6-29-76
08-17-76	admonition of record of proceedings, dated 7-21-76
08-17-76	admonition of record of proceedings, dated 8-3-76
8-19-76	Filed Supersedeas Bond in the sum of \$466,228.00. Federal Insurance Company, New York, N.Y.
09-02-76	Filed Bond No. 2478397 (SUPERSEDAS) in the sum of \$7,792.45 National Surety Corp. (Fireman's Fund)
9-8-76	Filed notice of appeal by Big Seven Music Corp. Adam VIII and Morris Levy from final judgment entered on 8-10-76 and decisions dtd. 2-20-76, 4-8-76, 7-13-76, 7-23-76, 8-3-76 and 8-5-76. Copy to Hagan & Hartman 415 Connecticut Ave. Wash. D.C. James M. Bergen 430 Park Ave. NYC George J. Grumbach, Jr. 1 State St. Plaza NYC
-23-76	Filed CROSS NOTICE OF APPEAL by deft. John Lennon from final judgment entered on Aug. 10, 1976 as awarded pliff Big Seven Music Corp. Copy mailed to pliffs atty.

CONTINUED ON PAGE NO. 9

Relevant Docket Entries.

75 CIV 1216 BIG SEVEN MUSIC CORP. ETAL VS: JOHN LENNON, ETAL

GRISSA

PROCEEDINGS

Date of
Judgment

date	PROCEEDINGS	Date of Judgment
09-30-76	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS, DATED 9-23-76.	
10-13-76	Filed stipulation between the parties that pliffs' exhibit 201 as indicated shall be deemed to have been admitted in evidence at the trial as pliffs' exhibit 201B and that defts' exhibit CR as indicated shall be deemed to have been admitted in evidence at the trial as defts' exhibit CR-1.	

A TRUE COPY
 RAYMOND E. BURCHETT, JR.
 Deputy Clerk

Amended Complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BIG SEVEN MUSIC COPP. and :
ADAM VIII, LTD., :

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC., :
HAROLD SEIDER, CAPITOL RECORDS, :
INC. and EMI RECORDS LIMITED, :

Defendants. :
-----x

AMENDED COMPLAINT

75 Civ. 1116 (L.F.M.)

(Jury Trial Demanded)

Plaintiffs, by their attorneys, Walter, Conston, Schurtman & Gumpel, P.C., complaining of defendants, allege

JURISDICTION AND VENUE

1. This action is brought under Section 4 of the Clayton Act (15 U.S.C. §15) for threefold the damages sustained by plaintiffs by reason of violations by defendants and others of the antitrust laws of the United States (15 U.S.C. §1 et seq.). This Court has pendant jurisdiction over plaintiffs' Counts II through VIII.

THE PARTIES

2. Plaintiff Big Seven Music Corp. ("Big Seven") is a New York corporation, engaged in interstate and foreign commerce, whose principal place of business is located in the City, County and State of New York. Big Seven is a music publishing company which owns the copyrights in numerous songs in the popular music field.

FILED
U.S. DISTRICT COURT
S.D.N.Y.
OCT 17 2 43 PM '75

Amended Complaint.

3. Plaintiff Adam VIII, Ltd. ("Adam VIII") is a New York corporation, engaged in interstate and foreign commerce, whose principal place of business is located in the City, County and State of New York. Adam VIII specializes in selling phonograph records and tapes through television advertising.

4. Defendant John Lennon ("Lennon") is a well-known international singer and songwriter of popular music. On information and belief, he is a resident of the State of New York and is the President of defendant Apple Records, Inc.

5. On information and belief, defendant Apple Records, Inc. ("Apple") is a New York corporation, engaged in interstate and foreign commerce, whose principal place of business is located in the City, County and State of New York.

6. On information and belief, defendant Capitol Records, Inc. ("Capitol") is a Delaware corporation, engaged in interstate and foreign commerce, which is authorized to do business in New York, which maintains offices for the conduct of business in the City, County and State of New York and is one of the largest distributors in the United States of phonograph records and tapes of popular music.

7. On information and belief, defendant Harold Seider ("Seider") is an attorney who at all times material hereto has acted as an advisor to Lennon.

8. On information and belief, defendant EMI Records Limited ("EMI") an English corporation, engaged in interstate and foreign commerce, which is one of the largest distributors in the world of phonograph records and tapes of popular music and which is authorized to do, and transacts business in New York.

Amended Complaint.

THE FACTSThe October 1973 Settlement

9. On October 12, 1973, as part of the settlement (the "October 1973 settlement") of a copyright infringement action entitled, Big Seven Music Corp. v. Maclen Music, Inc., et al., to Civ. 1348 (S.D.N.Y.). Apple and Lennon agreed in open court that Lennon, in his next album, would include three compositions owned by Big Seven, including a song entitled, "You Can't Catch Me", and would either cause Apple to license three songs to Big Seven prior to December 31, 1974 or record two additional songs owned by Big Seven. A copy of the transcript of the October 12, 1973 hearing is attached as Exhibit A.

10. The attorneys for Apple and Lennon confirmed the terms of the October 1973 settlement in a letter dated October 30, 1973 (a copy of which is attached as Exhibit B), which Lennon countersigned to indicate his understanding and express acceptance of its terms.

The Breach by Apple and Lennon
of the October 1973 Settlement

11. September 1974, Apple and Lennon released their next album, "Walls and Bridges", which did not comply with the terms of the October 1973 settlement. The album did not include "You Can't Catch Me" and it included only a brief excerpt from a song entitled "Ya Ya", which is owned by Big Seven. It failed to include a third Big Seven song.

12. Lennon failed to cause Apple to license, and Apple failed to license three songs to Big Seven prior to December 31, 1974.

The October 1974 Agreement

13. In or about October 1974, Lennon, individually and on behalf of Apple, agreed that the October 1973 settlement would be modified to provide that Lennon would record approximately 15 rock and roll songs, including several songs previously recorded under the production of one Phil Spector, which would be sold as a record and tape under the title "Roots" (hereinafter referred to collectively as the "album") by Big Seven or its assignee on a worldwide basis, through mail orders and retail fulfillment centers, by means of television merchandising. Big Seven agreed to pay Lennon and Apple an aggregate royalty of 12% and Lennon and Apple agreed that they would pay any obligations owed to Phil Spector and others.

14. Lennon, Apple and Seider each represented to Big Seven that neither Lennon nor Apple had any contracts with anyone which prohibited Lennon from making the album for Big Seven and that neither had previously given television merchandising rights to anyone. Big Seven duly relied on said representations.

15. Lennon, Apple and Big Seven all agreed that the recording and promotion of the album would be done as quickly as possible, and that during the time Big Seven was promoting the album, Lennon and Apple would not license or permit anyone but Big Seven to manufacture, sell or promote the album or any substantially similar recording.

16. Thereafter, and in or about November, 1974, Lennon, working together with representatives of Big Seven, recorded the album and delivered to Big Seven two master tapes containing the 15 selections.

Amended Complaint.

17. On or about December 11, 1974, Big Seven assigned its rights under the October 1974 agreement to Adam VIII, which immediately commenced preparations to press and release the album The Attempt by Apple and Lennon to Reinstate the October 1973 Settlement

18. In early January 1975, Big Seven received a letter from the attorneys for Apple and Lennon offering to license three selections to Big Seven. A copy of their letter is attached as Exhibit C.

19. Big Seven immediately responded by letter dated January 9, 1975 (a copy of which is attached as Exhibit D), in which Morris Levy, President of Big Seven, stated:

"I was surprised, to say the least to receive your letter dated December 31, 1974. The stipulation of settlement entered into on October 14, 1973, was breeched by John Lennon and since that time this entire matter has been resolved during meetings with John Lennon, Harold Sider, (John Lennon's attorney) and myself. In accordance with the agreement reached during those negotiations, John Lennon has recorded sixteen (16) sides which I will market throughout the world by use of television advertising.

Please adjust your records to indicate that the original stipulation is no longer of any effect."

20. Big Seven received no response to the aforesaid January 9, 1975 letter.

Production and Release of the Album

21. On or about January 20, 1975, plaintiffs informed Seider that they were making final preparations to release the album the following week.

Amended Complaint.

22. On or about February 8, 1975, Adam VIII began advertising the album on selected television stations throughout the United States.

Defendants' Efforts to Prevent
the Production, Promotion and
Sale of Plaintiffs' Album

23. On or about February 10, 1975, plaintiffs received a telegram (a copy of which is attached as Exhibit E) from Capitol notifying plaintiffs, for the first time, that EMI purported to own the master tapes to the album and that Capitol purported to have the exclusive right to distribute the album in the United States.

24. The telegram further demanded that plaintiffs not sell or advertise the album, and stated that Capitol proposed to make similar demands upon "all television stations, advertising agencies, pressing plants, album cover manufacturers and all others" who participate with plaintiffs in the release and promotion of the album.

25. In response, plaintiffs immediately sent Capitol a telegram advising that Apple and Lennon had granted plaintiffs full television merchandising rights to the album and warning Capitol not to interfere with plaintiffs' merchandising program. A copy of plaintiffs' telegram is attached as Exhibit F.

26. Capitol then sent plaintiffs a reply telegram advising plaintiffs that Capitol proposed to continue to make demands that plaintiffs' suppliers, advertising outlets and sale fulfillment organizations not assist plaintiffs in the preparation or distribution of the album. A copy of this telegram is attached as Exhibit G.

Amended Complaint.

27. By telegram dated February 10, 1975, Lennon claimed that Adam VIII was not authorized to use his name and likeness or his recorded performances in connection with the album. A copy of this telegram is attached as Exhibit H.

28. By the telegram of February 12, 1975, Seider denied the existence of the October 1974 Agreement. A copy of Seider's telegram is attached as Exhibit I.

29. On information and belief, Capitol has sent threatening telegrams to many of plaintiffs' suppliers, advertising outlets and sale fulfillment organizations.

30. On information and belief, Capitol has released and has begun actively to promote and sell in interstate commerce throughout the United States a John Lennon album (the "Capitol album") apparently made from the same tapes as the ones Lennon and Apple delivered to plaintiffs.

31. On information and belief, the Capitol album is priced at \$5.98, a dollar below Capital's normal price for comparable albums. Moreover, as a result of a promotion sponsored and subsidized by Capitol, it is being offered to the public in the New York metropolitan area through the E.J. Korvette chain of stores at a price of only \$3.29.

32. On information and belief, on or about February 13, 1975, Lennon, during a live interview broadcast by radio station WNEWFM in New York City, told his audience that the Adam VIII album was unauthorized and not genuine and urged the public not to buy it. Similar statements by defendants were reported in the trade press.

Amended Complaint.

COUNT IRestraint of Trade and
Attempt to Monopolize

33. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

34. On information and belief, defendants, in violation of Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§1 and 2, have agreed, combined and conspired with one another to prevent plaintiffs from promoting and selling the album successfully in interstate and foreign commerce and to monopolize the trade for recordings by Lennon.

35. In furtherance of their agreement, combination and conspiracy, defendants, acting individually or in concert:

A. harrassed and threatened, and continue to harass and threaten, plaintiffs' suppliers, advertising outlets and sale fulfillment organizations with litigation and loss of business;

B. induced or sought to induce, and continue to induce or seek to induce plaintiffs' suppliers, advertising outlets and sale fulfillment organizations to refuse to do business with and boycott plaintiffs;

C. offered, and continue to offer plaintiff's customers, at an artificially low price, a product substantially similar to plaintiffs', thereby engaging in predatory price cutting;

D. sought, and continue to seek to confuse plaintiffs' customers by falsely and deliberately representing that the album is unauthorized and not a genuine recording by Lennon;

Amended Complaint.

E. urged, and continue to urge plaintiffs customers not to buy and to boycott the album; and

F. engaged, and continue to engage in other improper, illegal and restrictive practices, all to the detriment of plaintiffs.

36. As a consequence, plaintiffs have been unable, and continue to be unable to promote and sell the album in interstate commerce in competition with the Capitol album.

37. Plaintiffs have been damaged in the sum of \$14,000,000.

COUNT IIBreach of the October 1974 Agreement

38. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

39. Apple and Lennon have breached the October 1974 agreement.

40. As a consequence, plaintiffs have been damaged in the sum of \$7,000,000.

COUNT IIIConspiracy to Induce Breach
of the October 1974 Agreement

41. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

42. On information and belief, Capitol, EMI and Seider have known of the October 1974 agreement for several months and have conspired and schemed with one another to induce Lennon and Apple to breach the October 1974 agreement.

Amended Complaint.

43. On information and belief, in furtherance of their scheme and conspiracy, Capitol, EMI and Seider, acting individually and in concert, falsely and maliciously advised Lennon and Apple that they had no duty to honor the October 1974 agreement and that they were required to record exclusively for Capitol.

44. On information and belief, certain of the tortious acts complained of herein were committed within the State of New York.

45. As a consequence, Lennon and Apple were induced to breach the October 1974 agreement and plaintiffs were damaged in the sum of \$7,000,000.

COUNT IVTortious Interference With
the October 1974 Agreement

46. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

47. On information and belief, Capitol, EMI and Seider, acting individually and in concert, with knowledge of the October 1974 agreement tortiously induced Lennon and Apple to breach it.

48. On information and belief, certain of the tortious acts complained of herein were committed within the State of New York.

49. As a consequence, plaintiffs have been damaged in the sum of \$7,000,000.

Amended Complaint.

COUNT VIntentional Falsehood

50. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

51. Defendants, acting individually and in concert, as part of a scheme and conspiracy to injure plaintiffs, have deliberately and falsely sought, and continue to seek to induce the belief and create the impression that plaintiffs' production, sale and distribution of the album is unauthorized and illegal.

52. As a consequence, plaintiffs have suffered, and will continue to suffer damage to their reputation and good will and have sustained, and will continue to sustain a loss of profits and sales. Three New York television stations, WNEW (Channel 5), WOR-TV (Channel 9) and WPIX (Channel 11) and a Boston television station, WLVI, have failed and refused to broadcast plaintiffs' advertisements for the album. RCA Records has failed and refused to act as plaintiffs' sale fulfillment organization for the album. Queens Lithographing Corp. has failed and refused to print labels for plaintiffs' tapes. Plaintiffs anticipate that other television stations will not carry their advertisements and that many prospective customers will not purchase the album.

53. On information and belief, certain of the tortious acts complained of herein were committed within the State of New York.

54. Plaintiffs have sustained general damages of \$7,000,000 and special damages of \$7,000,000.

Amended Complaint.

COUNT VIFraud

55. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

56. If in fact Lennon or Apple were not free to enter into the October 1974 Agreement with plaintiffs because of a prior agreement with Capitol or others, then Lennon, Apple and Seider deliberately, by means of making statements and representations which they knew to be untrue, and for the purpose, and with the expectation, of causing plaintiffs to rely on said statements and representations, to plaintiffs' detriment, induced plaintiffs to enter into the October 1974 Agreement and to take actions and incur expenses as a consequence thereof.

57. Plaintiffs have been damaged in the sum of \$7,000,000.

COUNT VII

Unfair Competition and
Conspiracy to Prevent Plaintiffs
From Promoting and Selling the
Album Successfully

58. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

59. On information and belief, defendants maliciously conspired and schemed with one another to prevent plaintiffs from promoting and selling the album successfully and have engaged and are continuing to engage in unfair competition with plaintiffs.

60. In furtherance of their scheme and conspiracy, defendants, acting individually or in concert:

Amended Complaint.

A. harassed and threatened, and continue to harass and threaten, plaintiffs' suppliers, advertising outlets and sale fulfillment organizations;

B. induced or sought to induce, and continue to induce or seek to induce plaintiffs' suppliers, advertising outlets and sale fulfillment organizations to refuse to do business with plaintiffs;

C. offered, and continue to offer plaintiffs' customers, and at an artificially low price, a product substantially identical to plaintiffs';

D. sought, and continue to seek to confuse plaintiffs' customers by falsely and deliberately representing that the album is not a genuine recording by Lennon;

E. urged and continue to urge plaintiffs' customers not to buy the album; and

F. engaged, and continue to engage in other improper, illegal and unfair practices, all to the detriment of plaintiffs.

61. On information and belief, certain of the tortious acts complained of herein were committed within the State of New York.

62. As a consequence, plaintiffs have suffered, and will continue to suffer damage to their reputation and good will and have sustained, and will continue to sustain a loss of profits and sales. Three New York television stations, WNEW (Channel 5), WOR-TV (Channel 9) and WPIX (Channel 11) and a Boston television station, WLVI, have failed and refused to broadcast plaintiffs'

Amended Complaint.

advertisements for the album. RCA Records has failed and refused to act as plaintiffs' sale fulfillment organization for the album. Queens Lithographing Corp. has failed and refused to print labels for plaintiffs' tapes. Plaintiffs anticipate that other television stations will not carry their advertisements and that many prospective customers will not purchase the album.

63. Plaintiffs have sustained general damages of \$7,000,000 and special damages of \$7,000,000.

COUNT VIIIPrima Facie Tort

64. Plaintiffs hereby incorporate paragraphs 1 through 32 herein.

65. On information and belief, defendants have wilfully, deliberately and maliciously conspired and schemed with one another to cause plaintiffs injury.

66. As a consequence, plaintiffs have suffered, and will continue to suffer damage to their reputation and good will and have sustained, and will continue to sustain a loss of profits and sales. Three New York television stations, WNEW (Channel 5), WOR-TV (Channel 9) and WPIX (Channel 11) and a Boston television station, WLVI, have failed and refused to broadcast plaintiffs' advertisements for the album. RCA Records has failed and refused to act as plaintiffs' sale fulfillment organization for the album. Queens Lithographing Corp. has failed and refused to print labels for plaintiffs' tapes. Plaintiffs anticipate that other television stations will not carry their advertisements and that many prospective customers will not purchase the album.

Amended Complaint.

67. As a consequence, plaintiffs have sustained general damages of \$7,000,000 and special damages of \$7,000,000.

WHEREFORE: plaintiffs' demand judgment as follows:

A. On Count I, against the defendants, jointly and severally, in the sum of \$42,000,000, being three times the amount of plaintiffs' damages; together with all the costs, including reasonable attorneys' fees, and disbursements of this action;

B. On Count II, damages against defendants Apple and Lennon, jointly and severally, in the amount of \$7,000,000;

C. On Count's III and IV, compensatory damages of \$7,000,000 and punitive damages of \$15,000,000 against defendants Capitol, EMI and Seider, jointly and severally;

D. On Counts V, VII and VIII, general damages of \$7,000,000 special damages of \$7,000,000 and punitive damages of \$15,000,000 against defendants Lennon, Apple, Capitol, EMI and Seider, jointly and severally;

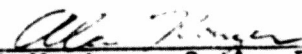
E. On Count VI, general damages of \$7,000,000, special damages of \$7,000,000 and punitive damages of \$15,000,000 against defendants Lennon, Capitol and Seider, jointly and severally;

Amended Complaint.

- F. Reasonable attorneys' fees;
- G. Interest on each cause of action from the date of the commencement of this action;
- H. The costs and disbursements of this action; and
- I. Such other and further relief as this Court deems proper.

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.

By


A Member of the Firm
Attorneys for Plaintiffs
Big Seven Music Corp. and
Adam VIII, Ltd.
330 Madison Avenue
New York, New York 10017
(212) 682-2323

Demand for Jury Trial.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues
herein.

Dated:

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.

By

A Member of the Firm
Attorneys for Plaintiffs
330 Madison Avenue
New York, New York 10017
(212) 682-2323

Exhibit A, Transcript of October 12, 1973 Hearing.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP.,

Plaintiff,

-against-

70 Civ. 1348

MACLEN MUSIC, INC., NORTHERN SONGS,
LTD., and APPLE RECORDS, INC.,

Defendants.

Before:

HON. THOMAS L. GRIESA,

District Judge.

October 12, 1973
4:00 p.m.

APPEARANCES:

FEINMAN & KRASILOVSKY, ESQS.

Attorneys for Plaintiff

BY: WILLIAM KRASILOVSKY, ESQ.

ORENSTEIN, ARROW, SILVERMAN & PARCHER, ESQS.

Attorneys for Defendants MacLen Music and Northern

BY: L. PETER PARCHER, ESQ., and
PETER HERBER, ESQ.

MARSHALL, DRATTER, GREENE, ALLISON & TUCKER, ESQS.

Attorneys for Defendant Apple Records and John Lennon

BY: MICHAEL GRAHAM, ESQ.

Exhibit A.

2 THE COURT: Counsel notified me this morning
3 that this case has been settled and they are present now
4 and we would like to put on the record the agreement to
5 discontinue the action and whatever else the parties want
6 to put on the record.

7 Do you want to start, Mr. Graham?

8 MR. GRAHAM: Yes.

9 THE COURT: You are speaking on behalf of?

10 MR. GRAHAM: Apple Records, Inc., New York,
11 a named defendant, and John Lennon, who is not a named
12 defendant, but is a party to the settlement agreement.

13 This action will be discontinued with
14 prejudice by plaintiff against all main defendants and the
15 plaintiff Big Seven agrees to release all claims it may
16 have against John Lennon, arising out of the composition
17 "Come Together."

18 The settlement agreement reached to dispose of
19 this action is as follows:

20 John Lennon agrees to record three songs
21 belonging to Big Seven publishers on his next album. The
22 songs which John Lennon intends to record at this time are
23 "You Can't Catch Me," "Angel Baby," and "Ya Ya."

24 John Lennon reserves the right to alter the
25 last two songs, that is, "Angel Baby" and "Ya Ya" to any

Exhibit A.

3 record "You Can't Catch Me."
4

5 John Lennon will use his best efforts to
6 cause Apple, which is a composite of various corporations,
7 to license to Big Seven, three songs from the Apple
8 non-Beatle catalogue currently in circulation, excluding
9 only those songs composed by John Lennon and Yoko Ono
10 Lennon together and those songs composed by Paul
11 McCartney and Linda McCartney together, to the extent that
12 any of those songs can be in any manner considered to be an
13 Apple non-Beatle product.

14 In the alternative, if Apple for any reason
15 does not license three songs to Big Seven prior to
16 December 31, 1974, John Lennon agrees that he will record
17 an additional two songs belonging to Big Seven, one song
18 to be recorded prior to December 31, 1974 and one song
19 prior to December 31, 1975.

20 At any time Mr. Lennon can choose the second
21 alternative of recording two additional songs belonging to
22 Big Seven and is not obligated to pursue his undertaking
23 to cause Apple to make the songs available, the three
24 songs available to Big Seven if he makes such a selection.

25 MR. KRASILOVSKY: I believe there is one
correction which Mr. Graham will approve and that is that

2. the licensing by Apple refers to the licensing of the
3. recorded condition as well as the mechanical reproduction
4. rights.

5. MR. GRAHAM: Yes, and that those licenses will
6. be made to Big Seven at Big Seven's customary rates,
7. whatever they may be at the current time, and with such
8. advances which are in current practice which I understand
9. to be a nominal advance.

10. MR. KRASILOVSKY: I have no information as to
11. the subject of advance and I would have to rely upon
12. whether Mr. Graham's information from my own client is
13. according to that statement.

14. I have no information whatsoever about there
15. being any advance agreed upon.

16. THE COURT: Aside from that understanding, is
17. that the agreement and do you stipulate to the discontinu-
18. ance of this action?

19. MR. KRASILOVSKY: I do, your Honor. This has
20. been confirmed by my client except with respect to the
21. question of advance.

22. THE COURT: Counsel for Northern Songs --

23. MR. PARCHER: If I may be heard briefly.

24. Neither Northern nor Macdon can object to Big
25. Seven discontinuing its action against it with prejudice,

IKOUB

2 I would like to make one statement to clarify
3 my statement as to the next album.

4 For the record, the next album being released
5 by John Lennon will be an album of his next recordings and
6 the next album will be, in fact, the second album to be
7 released.

8 MR. KRASILOVSKY: I accept that correction.

9 MR. GRAHAM: The license, the mechanical
10 license of the songs to be recorded by John Lennon
11 belonging to the catalogue of Big Seven, whether that
12 becomes three songs or five songs, shall be at the
13 statutory rate of 2 cents per song.

14 MR. KRASILOVSKY: That is correct.

15 THE COURT: Anything else on the record?

16 Just so it is absolutely clear, the action is
17 discontinued with prejudice and without costs as to any
18 party; is that correct?

19 MR. KRASILOVSKY: That is correct.

20 MR. PARCHER: That is correct.

21 MR. GRAHAM: That is correct, your Honor.

22 THE COURT: Thank you all very much.

23 (Court adjourned.)
24
25

Exhibit B, Letter dated October 30, 1973.

MARSHALL BRATTLE GREENE, ALFISON & TUCKER

430 PARK AVENUE, NEW YORK, N.Y. 10022 TEL. 212 617 7200

October 30, 1973

Mr. John C. Apple
1 West 72nd Street
Apt. 17
New York, New York 10023

Re: Big Seven Music Corp. v.
Inclen Music, Inc., et al.
70 Civ. 1348
S.D.N.Y.

Dear John:

In accordance with our conversation when I met you in California, a settlement agreement with respect to the above-entitled action was dictated upon the record on October 12, 1973. A copy of the transcript containing the settlement agreement is enclosed for your files.

The settlement agreement, as you know, provides that you will record three (3) compositions, in whole or in part, owned by Big Seven Music Corp. ("Big Seven"), or person or persons and that one (1) of the songs to be recorded, in whole or in part, shall be "You Can't Catch Me". You have the right to choose the remaining two (2) songs from the entire catalogue of compositions belonging to Big Seven.

In addition, you have agreed, at your discretion, to perform either of the following:

(A) To use your best efforts to cause the appropriate Apple company to license to

BEST COPY AVAILABLE

Exhibit B.

Mr. John One Lennon
 1000 Ave
 October 30, 1973

Big Seven three (3) songs from the Apple Non-Battle catalogue currently in circulation. The three (3) songs to be licensed cannot include any songs composed jointly by Yoko Ono and yourself or composed jointly by Linda McCartney and Paul McCartney, to the extent that any of such songs can be considered part of the Apple Non-Battle catalogue. Big Seven will pay to Apple its customary royalty rates at the time of licensing, together with its customary advance at such time with respect to each of the three (3) compositions to be licensed; or

(B) If the appropriate Apple company, for any reason, does not license said three (3) songs to Big Seven prior to December 31, 1974, you agree that you will record two (2) additional songs, in whole or in part, owned by Big Seven, and (2) songs prior to December 31, 1974 and one (1) song prior to December 31, 1975.

With respect to the three (3) songs which you have agreed to record and the two (2) additional songs which you would record if you select alternative (B), the mechanical royalty to be paid to Big Seven for each composition recorded in whole or in part, shall be the statutory royalty of \$.02 per composition.

For our records, we would appreciate your signing and returning the enclosed copy of this letter indicating your confirmation of the terms of the settlement agreement as stated in the enclosed transcript and this letter.

Very truly yours,

Michael H. Graham

EWG/jg
 Encls.

CONFIRMED

BY: 

Exhibit C, Letter December 31, 1974.

MARSHALL, BRATTLE, GREENE, ALLISON & TUCKER

430 PARK AVENUE, NEW YORK, N.Y. 10022 • 212 • 421 7200

December 31, 1974

Big Seven Music Corporation
 17 West 60th Street
 New York, New York 10023

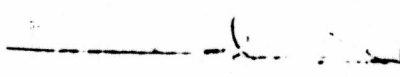
Re: Big Seven Music Corp. v.
 Maclean Music Inc., et al
 70 Civ. 1348
 S.D.N.Y.

Gentlemen:

In accordance with the stipulation of settlement entered into on October 12, 1973 with respect to the above-entitled matter, please be advised that the following master recordings are available for licensing and that you may select three (3) of the following:

Mary Hopkin	Those Were the Days	Apple 1801
James Taylor	Carolina on my Mind	Apple 1805
Badfinger	Come and Get it	Apple 1815
Badfinger	Apple of My Eye	
Badfinger	No Matter What	Apple 1822
James Taylor	Something's Wrong	Apple 1805
Mary Hopkin	Goodbye	Apple 1806

Very truly yours,


 David Dolgenos

DD:dl

cc: Mr. H. Wm. Krasilovsky
 424 Madison Avenue
 New York, N.Y.

Exhibit D, Letter January 9, 1975.

Readette Records, Inc.
17 WEST 10TH STREET, NEW YORK, N.Y. 10011

Morris Levy, president

January 9, 1975

Mr. David Dolgenos
Marshall, Bratter,
Allison & Tucker
430 Park Avenue
New York, N.Y.

Re: Big Seven Music v.
Maclen Music Inc.

Dear David,

I was suprised, to say the least to receive your letter dated December 31, 1974. The stipulation of settlement entered into on October 14, 1973, was breeched by John Lennon and since that time this entire matter has been resolved during meetings with John Lennon, Harold Sider, (John Lennon's attorney) and myself. In accordance with the agreement reached during those negotiations, John Lennon has recorded sixteen (16) sides which I will market throughout the world by use of television advertising.

Please adjust your records to indicate that the original stipulation is no longer of any effect.

Best regards.

Sincerely,

Morris Levy

Exhibit E, Telegram.



NYD149(1945)(1-6400570042)WD 02/07/75 1942

THX CAPWEN NYK

001 NEW YORK NY FEB 7 1975

PMS MORRIS LEVY

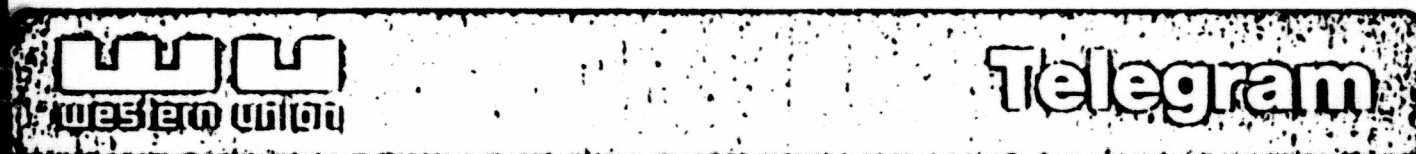
CAME ROULETTE RECORDS, INC.

17 WEST 60 STREET NEW YORK NY

AS YOU KNOW EMI RECORDS, LTD. OWNS THE MASTERS OF THE JOHN LENNON ALBUM

YOU HAVE RELEASED OR PROPOSE TO RELEASE FOR SALE TO THE PUBLIC. WE ARE THE EXCLUSIVE DISTRIBUTORS OF EMI PRODUCT IN THE UNITED STATES AND YOU HAVE NOT OBTAINED OUR APPROVAL OR CONSENT NOR THAT OF EMI TO RELEASE BY YOU OF SAID ALBUMS. WE DIRECT YOUR ATTENTION TO NEW YORK GENERAL BUSINESS LAW, SECTION 561. FURTHER, YOU HAVE NOT RECEIVED WRITTEN AUTHORIZATION TO USE OF LENNON'S NAME OR LIKENESS IN CONNECTION WITH DISTRIBUTION OF PHONOGRAPH RECORDS. WE AND EMI

BF-1201 (RS-60)



INTEND TO HOLD YOU FULLY RESPONSIBLE FOR ANY DAMAGE SUFFERED BY REASON

OF SUCH UNAUTHORIZED RELEASE. WE DEMAND THAT YOU DO NOT SELL OR ADVERTISE FOR SALE SAID ALBUM, DIRECTLY OR INDIRECTLY, AND WE PROPOSE TO MAKE SIMILAR DEMAND UPON ALL TELEVISION STATIONS, ADVERTISING AGENCIES, PRESSING PLANTS, ALBUM COVER MANUFACTURERS AND ALL OTHERS WHO PARTICIPATE WITH YOU IN SUCH UNAUTHORIZED RELEASE OF THE ABOVE.

CAPITOL RECORDS, INC.

NNNN

Exhibit F, Plaintiff's Telegram.

Capitol Records Inc.

We have received your telegram of February 7, 1975. Please be advised that we have granted full television merchandising rights to these artists by Apple Records Inc. and Joan Lennon. If you try to interfere with our merchandising program in any way, we will hold you fully accountable for any damages sustained by us.

ALLIANCE MUSIC CORP.
by Morris Levy, President

APPLE RECORDS INC.
by Morris Levy, President

Exhibit G, Reply Telegram.

From Western Union 1440 Broadway
Feb. 12, 1975

Attn: Morris Levy

In response to your telegram of February 10th, we again advise you that neither EMI, the owner of the masters, nor we have granted approval or consent to your sale of Lennon albums or advertising same for sale. Neither Lennon nor Apple had the right or authority to grant to you television merchandising rights. You are again advised that we propose to continue to make demands upon all television stations advertising agencies, pressing plant, album cover manufacturers and all others who participated with you in such unauthorized sale and/or advertising to cease and desist from doing so forthwith.

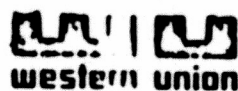
Capitol Records, Inc.

Exhibit H, Telegram February 10, 1975.

MGMNYBT MSC

2-016986E042 02/11/75

ICS IPHMTZZ CSP

2124217200 MGM TDMT NEW YORK NY 100 02-11 1228P EST
ZIP**Mailgram**ADAM VII LTD
17 WEST 60 ST
NEW YORK NY 10023THE USE OF MY RECORDED PERFORMANCES AND MY NAME AND LIKENESS IN THE
ALBUM ENTITLED "ROOTS" AND OR "JOHN LENNONS ROCK AND ROLL HITS" AND
ADVERTISING IN CONNECTION THEREWITH IS UNAUTHORIZED
JOHN LENNON

12128 EST

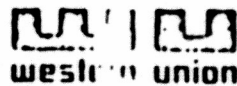
MGMNYBT MSC

Exhibit I, Seider's Telegram.

MGMNYLT HSB

2-038574E043-02/12/75

ICS IPHMTZZ CSP

2124217536 MGM TDMT NEW YORK NY 173 02-12 0416P EST
ZIP

Mailgram



MORRIS LEVY, PRES
BIG SEVEN MUSIC CORP AND B LTD
17 WEST 60 ST
NEW YORK NY 10023

IN RESPONSE TO YOUR TELEGRAM OF FEB 11, 1975 AS YOU ARE WELL AWARE
THERE HAS NEVER BEEN ANY AGREEMENT AS INDICATED THEREIN, JOHN LENNON
DID NOT AGREE ON BEHALF OF APPLE RECORDS INC OR FOR HIMSELF
INDIVIDUALLY TO RECORD YOUR SELF STYLED "ROOTS" ALBUM FOR BIG SEVEN
MUSIC CORP, NOR DID HE GRANT ALLEDGED TELEVISION MERCHANDISING RIGHTS
TO BIG SEVEN MUSIC CORP. I DEMAND THAT YOU PROVIDE ME WITH ANY WRITINGS
ALLEDGED BY YOU TO CONTAIN ANY PURPORTED AGREEMENTS TO ANY OF THE
FOLLOWING: 1. YOUR USE OF JOHN LENNON'S NAME OR LIKENESS 2. LENNON'S
PURPORTED AGREEMENT ON BEHALF OF HIMSELF INDIVIDUALLY TO RECORD THE
SELF STYLED "ROOTS" ALBUM FOR BIG SEVEN MUSIC CORP 3. LENNON'S
PURPORTED AGREEMENT ON BEHALF OF APPLE RECORDS INC TO RECORD THE SELF
STYLED "ROOTS" ALBUM FOR BIG SEVEN MUSIC CORP 4. ANY ALLEDGED GRANT OF
MERCHANDISING RIGHTS FROM JOHN LENNON TO BIG SEVEN MUSIC CORP. 5. ANY
ALLEDGED GRANT BY LENNON ON BEHALF OF APPLE RECORDS INC OF
MERCHANDISING RIGHTS TO BIG SEVEN MUSIC CORP

HAROLD SEIDER

16116 EST

MGMNYIT HSB

Second Amended Answer and Counterclaim of Defendant EMI.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKBIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS,
INC., HAROLD SEIDER, CAPITOL,
RECORDS, INC. and EMI RECORDS,
LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional
Defendant on
Counterclaims.75 Civ. 1116
(LFM)SECOND AMENDED ANSWER AND
COUNTERCLAIM OF EMI RECORDS,
LIMITED

2

OCT 13 3 42 PM '75

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Defendant EMI Records, Limited ("EMI Records"), by its attorneys, hereby responds to plaintiffs' amended complaint, amends its answer, and counterclaims as follows:

1. Admits that plaintiffs purport to bring this action under Section 4 of the Clayton Act (15 U.S.C. § 15) and that plaintiffs claim that defendants and others violated the antitrust laws of the United States (15 U.S.C. § 1 et seq.), and denies the other allegations of paragraph 1 of the complaint.

2. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 2 and 3 of the complaint, except admits the allegations of the first sentence of paragraph 2 of the complaint and admits the allegations of the first sentence of paragraph 3 of the complaint.

Second Amended Answer and Counterclaim of EMI.

3. Admits that defendant John Lennon ("Lennon") is a well-known singer and songwriter of popular music, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 4 of the complaint.

4. Admits that defendant Apple Records, Inc. ("Apple") is a New York corporation, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 5 of the complaint.

5. Admits that defendant Capitol Records, Inc. ("Capitol"), is a Delaware corporation, is authorized to do business in New York, maintains offices for the conduct of business in the City, County and State of New York, and distributes throughout the United States phonograph records and tapes of popular music, and denies the other allegations of paragraph 6 of the complaint.

6. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the complaint.

7. Admits that EMI Records is an English corporation and denies the other allegations of paragraph 8 of the complaint.

8. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 9 and 10 of the complaint.

9. Admits that an album entitled "Walls & Bridges" was released, refers thereto for the contents thereof, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 11 of the complaint.

10. Admits that an album entitled "Roots" was heretofore advertised on television, and denies knowledge or information

Second Amended Answer and Counterclaim of EMI.

sufficient to form a belief as to the truth of the other allegations of paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the complaint.

11. Denies the allegations of paragraphs 23 and 24 of the complaint, except admits that Capitol sent a telegram, a copy of which is attached to the complaint as Exhibit E, and refers thereto for the terms thereof.

12. Denies the allegations of paragraph 25 of the complaint, except admits that Capitol received a telegram, a copy of which is attached to the complaint as Exhibit F, and refers thereto for the terms thereof.

13. Denies the allegations of paragraph 26 of the complaint, except admits that Capitol sent a telegram, a copy of which is attached to the complaint as Exhibit G, and refers thereto for the terms thereof.

14. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the complaint, except admits having been advised that Lennon sent a telegram.

15. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the complaint, except admits having been advised that defendant Harold Seider ("Seider") sent a telegram.

16. Admits that Capitol sent telegrams to certain television stations and others, refers thereto for the terms thereof, and denies the other allegations of paragraph 29 of the complaint.

17. Admits that Capitol has released, promoted and sold and is promoting and selling throughout the United States, an album entitled "John Lennon Rock 'n' Roll" ("Capitol Album"),

Second Amended Answer and Counterclaim of EMI.

and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 30 of the complaint.

18. Admits that a sum used by Capitol in connection with the Capitol Album is \$5.98, states that Capitol is distributing the Capitol Album in accordance with proper marketing practices, and denies the other allegations of paragraph 31 of the complaint.

19. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the complaint.

20. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 33 of the complaint.

21. Denies the allegations of paragraphs 34, 35, 36 and 37 of the complaint.

22. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 38 of the complaint.

23. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 39 and 40 of the complaint.

24. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 41 of the complaint.

25. Denies the allegations of paragraphs 42, 43, 44 and 45 of the complaint.

26. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 46 of the complaint.

27. Denies the allegations of paragraphs 47, 48 and 49 of the complaint.

28. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 50 of the complaint.

29. Denies the allegations of paragraphs 51, 53 and 54 of the complaint.

30. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 52 of the complaint.

31. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 55 of the complaint.

32. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the complaint.

33. Denies the allegations of paragraph 57 of the complaint.

34. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 58 of the complaint.

35. Denies the allegations of paragraphs 59, 60, 61 and 63 of the complaint.

36. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 62 of the complaint.

37. Incorporates paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 64 of the complaint.

38. Denies the allegations of paragraphs 65 and 67 of the complaint.

39. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have

Second Amended Answer of EMI.

sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 66 of the complaint.

FIRST AFFIRMATIVE DEFENSE:

40. The complaint fails to state a claim against EMI Records upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

41. Plaintiffs had and have no right to cause the album of recorded music entitled "Roots" which is the subject of this action to be recorded, manufactured, distributed, advertised, promoted or sold, and plaintiffs therefore lack standing to bring this action.

THIRD AFFIRMATIVE DEFENSE:

42. Upon information and belief, plaintiff Big Seven Music Corp. ("Big Seven") has assigned to plaintiff Adam VIII, Ltd. ("Adam VIII"), all of the rights Big Seven purports to have in connection with the album entitled "Roots", and Big Seven therefore lacks standing to bring this action.

FOURTH AFFIRMATIVE DEFENSE:

43. The "master" recording of the selections contained in the album entitled "Roots" referred to in the complaint, and all antecedents of said "master," were and are paid for and owned by EMI Records.

44. At all times mentioned in the complaint, the "master" recording of the selections contained in the album entitled "Roots" and all antecedents of said "master," were, and they are, the property of EMI Records, and only EMI Records had

Second Amended Answer of EMI.

the right to grant approval of or consent to use of said "master" or antecedents by plaintiffs.

45. At all times mentioned in the complaint, Capitol held and was the owner in the United States, and in other specified places, of exclusive rights to distribute, advertise, promote and sell phonograph records and tapes derived from said "master" recording and antecedents thereof owned by EMI Records.

46. At no time did EMI Records or Capitol approve or consent to the manufacture, distribution, advertising, promotion or sale by plaintiffs or either of them of phonograph records or tapes derived from said "master" recording or said antecedents, or derived from duplicates thereof, and any use thereof by plaintiffs was unauthorized and unlawful.

FIFTH AFFIRMATIVE DEFENSE:

47. If Apple purported to grant to plaintiffs, or either of them, rights as claimed by plaintiffs in the complaint herein, then such purported grant of rights was ineffectual and void by reason of the fact that Apple did not have the right or authority to grant to plaintiffs, or either of them, such rights.

SIXTH AFFIRMATIVE DEFENSE:

48. If Apple did have the right and authority to grant to plaintiffs the rights claimed by plaintiffs in the complaint herein, then, upon information and belief, any purported grant of such rights to plaintiffs through the acts of Lennon was void and ineffectual by reason of the fact that Lennon did not have power or authority to act for or on behalf of Apple and, upon information and belief, Lennon's lack of power or authority was known to plaintiffs at all times mentioned in the complaint.

Second Amended Answer of EMI.
SEVENTH AFFIRMATIVE DEFENSE:

49. If Lennon, allegedly acting individually or on behalf of Apple, purported to grant to plaintiffs rights as alleged in paragraphs 13, 15 and 16 of the complaint and elsewhere therein, then, upon information and belief, such purported grant of rights was ineffectual, void and not binding, inasmuch as, upon information and belief, no consideration from plaintiffs passed or was promised by plaintiffs, or either of them, to Apple.

EIGHTH AFFIRMATIVE DEFENSE:

50. If Lennon purported to grant to plaintiffs rights as alleged in paragraphs 13, 15 and 16 of the complaint and elsewhere therein, then such alleged grant of rights was not binding on any of the defendants inasmuch as, upon information and belief, the same constituted an alleged grant of rights which were not to be performed or exercised within one year and hence any such purported grant of rights was void and unenforceable under applicable statutes of frauds, including § 5-701, New York General Obligations Law.

NINTH AFFIRMATIVE DEFENSE:

51. Upon information and belief, the alleged agreement of October, 1974, referred to in paragraph 13 of the complaint and elsewhere therein, if such occurred, was void and unenforceable by reason of being vague, indefinite, incomplete and otherwise without the specificity required by law to comprise an enforceable agreement or undertaking.

TENTH AFFIRMATIVE DEFENSE:

52. If it is the claim of plaintiffs that, in making the agreement alleged in paragraphs 13, 15 and 16 of the complaint

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and elsewhere therein, Lennon granted to plaintiffs the right to use his name and likeness in connection with the sale of phonograph records, then such alleged grant of rights was not binding, inasmuch as, upon information and belief, such alleged grant of rights was not made in writing duly signed by Lennon and hence was unenforceable under § 50 and § 51, New York Civil Rights Law.

ELEVENTH AFFIRMATIVE DEFENSE:

53. The Court lacks jurisdiction over the claims asserted in paragraphs 38 - 67, inclusive, of the complaint, because the claims asserted in paragraphs 33 - 37, inclusive, of the complaint are insubstantial.

FIRST COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY -- LANHAM ACT:

54. EMI Records makes this counterclaim pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1970), and the jurisdiction conferred upon the Court by Section 39 of said Act, 15 U.S.C. § 1121 (1970), to recover its damages for and obtain an injunction against violations of said Section 43(a) by Big Seven, Adam VIII and Morris Levy ("Levy").

55. This counterclaim arises out of the same transactions and occurrences which are the subject matter of plaintiffs' complaint herein, and does not require for its adjudication the presence of any third party over whom the Court cannot acquire jurisdiction.

56. EMI Records repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5 and 7 hereof.

57. Pursuant to Rule 13(h), Fed. R. Civ. P., Levy, upon information and belief the President of Big Seven and Adam VIII since at least October 1973 and otherwise engaged in the music-entertainment business at all times relevant hereto, is

hereby joined as a defendant to this counterclaim. Levy maintains a business office and conducts business in the City, County and State of New York.

58. On or about January 26, 1967, and prior to any of the acts of Big Seven, Adam VIII and Levy complained of herein, Lennon and the other members of the music group known as the Beatles entered into a written agreement with The Gramophone Company, Limited ("Lennon-EMI Records agreement"). On or about July 1, 1973, The Gramophone Company, Limited, changed its name to EMI Records and all of the former's rights in the Lennon-EMI Records agreement became and remain vested in EMI Records. The Lennon-EMI Records agreement is for a term ending January 26, 1976. Pursuant to the Lennon-EMI Records agreement, Lennon granted to EMI Records the exclusive, world-wide rights, among other things, to manufacture, distribute and sell recordings of Lennon music performances, as well as the exclusive, world-wide rights to use Lennon's name and likeness in connection with said manufacture, distribution and sale.

59. On or about September 1, 1969, and prior to any of the acts of Big Seven, Adam VIII and Levy complained of herein, EMI Records entered into a written agreement with Apple ("EMI Records-Apple agreement"), wherein EMI Records granted to Apple, until January 26, 1976, among other things, exclusive rights to manufacture, distribute and sell in the United States, and in other specified places, recordings of Lennon music performances, and the exclusive rights to use Lennon's name and likeness in connection with said manufacture, distribution and sale.

60. On or about September 1, 1969, Apple entered into an agreement with Capitol and a subsidiary of Capitol which subsequently merged with Capitol ("Apple-Capitol agreement"), wherein Apple granted to Capitol and Capitol's former subsidiary, until

Second Amended Answer of EMI.

January 26, 1976, among other things, the exclusive rights to distribute and sell in the United States, and in other specified places, recordings of Lennon music performances, and the exclusive rights to use Lennon's name and likeness in connection with said distribution and sale. Capitol and Capitol's former subsidiary agreed to pay EMI Records sums based upon the amount of Capitol's sales of recordings of Lennon music performances.

61. The Lennon-EMI Records agreement, the EMI Records-Apple agreement, and the Apple-Capitol agreement have all been in force and effect continuously since executed and all remain in force and effect.

62. Lennon is and at all times relevant hereto was a celebrated musician, entertainer, performer, composer and recording star of unique talents, who has become and continues to be one of the best known and most successful music-entertainment personalities of our time.

63. The rights to manufacture, distribute and sell recordings of Lennon music performances and to use Lennon's name and likeness in connection therewith are property rights of extraordinary value, being worth millions of dollars.

64. EMI Records and Capitol have devoted very substantial and continuing financial and human resources to develop, exploit and utilize their exclusive contractual rights with regard to recordings of Lennon music performances. EMI Records and Capitol have applied extensive and successful production, promotional, marketing and distribution techniques and efforts in connection with their respective rights in recordings of Lennon music performances, involving expenditures by them of millions of dollars. Through these efforts, EMI Records and Capitol have been and are in large part responsible for the growth and

Second Amended Answer of EMI.

maintenance of the huge market which has been created for recordings of Lennon music performances.

65. Upon information and belief, in or about November 1974, Lennon, at Levy's request, gave Levy possession of a rough, preliminary tape recording of certain Lennon music performances ("Tape"), for the sole purpose of allowing Levy to listen to said Tape. The music performances recorded on the Tape were Lennon's musical interpretations of a number of selections of "rock and roll" music. The preliminary, roughly edited quality of the Tape was such that no record company would ordinarily have issued it to the public without first causing it to be edited and processed to produce a "master" recording of technically satisfactory sound quality. The Tape was subsequently supplemented, processed and edited into a "master" recording from which phonograph records and commercial tapes were intended to be produced, manufactured, marketed, distributed and sold pursuant to and under the terms of the Lennon-EMI Records, EMI Records-Apple and Apple-Capitol agreements.

66. The costs of producing, recording, processing and editing the music performances on the Tape, and of other Lennon music performances not on the Tape, and the costs of the "master" recording intended to be made, and which was made, in connection therewith, were very substantial and were paid by EMI Records. The Tape was the exclusive property of EMI Records. At no time did Lennon, Apple, EMI Records, or Capitol authorize or purport to authorize Big Seven, Adam VIII or Levy, or any other person or entity, to use the Tape for the purpose of producing, duplicating, manufacturing, promoting, distributing or selling any recording of Lennon music performances.

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67. In 1973, 1974 and early 1975, Capitol undertook extensive preparations to release, distribute and sell an album of Lennon "rock and roll" music performances ("Capitol Album") containing, among other recordings of Lennon music performances, some but not all of the Lennon music performances on the Tape. The Capitol Album was withheld from release pending Capitol's completion, in early 1975, of its pre-release preparations for the Capitol Album, including Capitol's pre-release publicity campaign which, as of February 1975, was well underway. The Capitol Album was released in February 1975 and entitled "John Lennon Rock 'n' Roll".

68. Upon information and belief, prior to the release of the Capitol Album, and in or about February 1975, Big Seven, Adam VIII and Levy began to promote publicly, offer for sale and sell to the public, throughout the United States, a phonograph album recording and a ~~+~~ recording of Lennon music performances, entitled "John Lennon Sings the Great Rock & Roll Hits -- Roots" ("Roots Album"). Upon information and belief, the Roots Album was produced from the Tape owned by EMI Records of which Levy obtained possession in November 1974, and not from the subsequently supplemented, processed and edited "master" recording. At no time did Lennon, Apple, EMI Records or Capitol authorize or purport to authorize Big Seven, Adam VIII or Levy, or any other person or entity, to manufacture, promote, distribute or sell the Tape, "master" recording, or Roots Album.

69. In promoting and selling the Roots Album, Big Seven, Adam VIII and Levy have extensively and commercially exploited recordings of Lennon music performances, and have extensively and commercially used Lennon's name, likeness and music performances, and have falsely represented and implied to

Second Amended Answer of EMI.

the public that the Roots Album was and is authorized by Lennon, Apple, EMI Records and Capitol. The foregoing uses, descriptions, representations, and implications were made by Big Seven, Adam VIII and Levy without the consent of Lennon, Apple, EMI Records, Capitol, or any of them. The foregoing uses, descriptions, representations and implications by Big Seven, Adam VIII and Levy have deceived and confused and are deceiving and confusing the public, including purchasers and prospective purchasers of Lennon albums, into believing that the Roots Album was authorized by Lennon, Apple, EMI Records and Capitol, or any of them.

70. Big Seven's, Adam VIII's and Levy's promotion and sale of the Roots Album, including but not limited to the record jacket thereof and their promotional and sales techniques and statements in connection with the Roots Album, and the Roots Album itself, are of inferior quality and do not meet the high standards of quality the public has come to expect of a recording of Lennon music performances, and of recordings owned, promoted, distributed and sold by EMI Records and Capitol. In addition, the Roots Album jacket included advertising for other performers and other albums, a practice in which Capitol and EMI Records would not engage in connection with Lennon albums. The inferior quality of the Roots Album and of its promotion and sale by Big Seven, Adam VIII and Levy, and the impressions of cheapness produced thereby, have diminished Lennon's stature and the stature of EMI Records and Capitol in the minds of the public, including purchasers and prospective purchasers of Lennon albums. Said diminution in the stature of Lennon, EMI Records and Capitol has significantly reduced the value of EMI Records' rights in recordings of Lennon music performances, and otherwise has damaged EMI Records.

Second Amended Answer of EMI.

71. As a result of Big Seven's, Adam VIII's and Levy's conduct related to the Roots Album, substantial sales of the Capitol Album have been lost and EMI Records accordingly has received smaller payments from Capitol attributable to the Capitol Album than it would have received but for the unauthorized, deceptive and confusion-producing acts of Big Seven, Adam VIII and Levy in connection with the Roots Album.

72. The unauthorized, false, deceptive and confusion-producing uses, descriptions, representations and implications by Big Seven, Adam VIII and Levy related to the Roots Album were made by them in connection with their manufacture, promotion and sale of the Roots Album in interstate commerce throughout the United States, in violation of EMI Records' rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1970).

73. By reason of the conduct alleged in this counterclaim, EMI Records has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$200,000, the exact amount to be determined at trial, and is entitled to its damages and injunctive relief from further injury.

**SECOND COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY -- UNFAIR
COMPETITION:**

74. EMI Records hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

75. Big Seven, Adam VIII and Levy, knowing they lacked any authorization or right to do so, intentionally and maliciously, and in knowing disregard of the rights of EMI Records and others, manufactured, promoted and sold the Roots Album throughout the

Second Amended Answer of EMI.

United States. Big Seven's, Adam VIII's and Levy's actions in connection with the Roots Album were and are in wrongful, intentional and malicious derogation of EMI Records' contractual rights. As a result of Big Seven's, Adam VIII's and Levy's wrongful, intentional and malicious acts of unfair competition alleged in this counterclaim, EMI Records has lost and continues to lose substantial sums due to the diminished sales of and revenues from the Capitol Album, the market for the Capitol Album and other recordings of Lennon music performances has been permanently damaged, and EMI Records has been otherwise damaged.

76. By reason of the conduct alleged in this counterclaim EMI Records has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount which exceeds \$200,000, the exact amount to be established at trial, and is entitled to its damages, and punitive damages of \$300,000, and injunctive relief from further injury.

THIRD COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY -- MISAPPROPRIATION:

77. EMI Records hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

78. Big Seven, Adam VIII and Levy intentionally and maliciously misappropriated and exploited the Tape owned by EMI Records, and EMI Records' and Capitol's rights in connection with recordings of Lennon music performances, for Big Seven's, Adam VIII's and Levy's own commercial use and advantage. As a result of Big Seven's, Adam VIII's and Levy's intentional and malicious misappropriation and exploitation of the Tape and of EMI Records' and Capitol's rights in connection with recordings of Lennon music performances, EMI Records has been deprived of the profits

Second Amended Answer of EMI.

it would have made but for Big Seven's, Adam VIII's and Levy's misappropriation and exploitation of the Tape and said rights, and Big Seven, Adam VIII and Levy have wrongfully profited from their misappropriation and exploitation of the Tape and said rights.

79. By reason of the conduct alleged in this counterclaim, EMI Records has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$200,000, the exact amount to be established at trial, and is further entitled to punitive damages of \$300,000, and injunctive relief from further injury.

FOURTH COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY -- INTERFERENCE
WITH ADVANTAGEOUS RELATIONS:

80. EMI Records hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

81. At all times material hereto, Big Seven, Adam VIII and Levy knew that Lennon was party to a contractual agreement with EMI Records pursuant to which agreement EMI Records owns exclusive world-wide rights with regard to recordings of Lennon music performances. Big Seven, Adam VIII and Levy knew at all times material hereto that no person or entity could lawfully enter into an agreement with Lennon to exploit commercially recordings of Lennon music performances without the authorization of EMI Records. Big Seven, Adam VIII and Levy knew at all times material hereto that the Lennon-EMI Records agreement, the EMI Records-Apple agreement and the Apple-Capitol agreement were in force and effect.

82. Notwithstanding Big Seven's, Adam VIII's and Levy's knowledge of the business relations between and among Lennon, EMI

Records, Apple and Capitol; Big Seven, Adam VIII and Levy sought to induce Lennon and Apple to breach Lennon's and Apple's respective agreements with EMI Records and Capitol, and otherwise sought to interfere with the advantageous business relations between and among Lennon, EMI Records, Apple and Capitol.

83. The acts undertaken by Big Seven, Adam VIII and Levy to induce said breaches and interfere with said advantageous relations include but are not limited to the facts set forth in this counterclaim. Said acts were undertaken for the purposes of disrupting, interrupting and terminating the advantageous business relations between and among Lennon, EMI Records, Apple and Capitol by, among other things, seeking to cause antagonism and disputes between and among them. Said acts of Big Seven, Adam VIII and Levy were undertaken to the end that they might secure for themselves economic advantage at the expense of, and in derogation of the contractual and other advantageous business relations between and among, Lennon, EMI Records, Apple and Capitol. Said acts of Big Seven, Adam VIII and Levy were undertaken intentionally and maliciously, for the purpose, among others, of making, and said acts did make, performance of the Lennon-EMI Records agreement and the Apple-Capitol agreement impossible with respect to the Capitol Album, since the manufacture, promotion, distribution and sale of the Roots Album destroyed the market exclusivity that the Capitol Album would otherwise have had, and said acts have otherwise injured Capitol and EMI Records. Moreover, the benefits flowing to EMI Records under the Lennon-EMI Records agreement have been significantly impaired due to the reduced sales of the Capitol Album caused by said acts, and significantly impaired by the injury to and depreciation of the market for both the Capitol Album and other recordings of Lennon music performances caused by said acts.

Second Amended Answer of EMI.

84. By reason of the conduct alleged in this counterclaim, EMI Records has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$200,000, the exact amount to be determined at trial, and is entitled to its damages, punitive damages of \$300,000, and injunctive relief from further injury.

FIFTH COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY -- COPYRIGHT:

85. EMI Records hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

86. The music on the Tape embodies the unique artistry and rendition which only Lennon could contribute thereto. Lennon's unique artistry and rendition on the Tape made the Tape exceedingly valuable and the right to publish the Tape or any part thereof exceedingly valuable. From the time the music on the Tape was first recorded, continuously to date, EMI Records has owned exclusively the common law copyright in the Tape. Under said common law copyright, EMI Records owned the exclusive right of first publication of the Tape and every part thereof. By publishing the Tape and the Roots Album, Big Seven, Adam VIII and Levy intentionally and maliciously infringed EMI Records' common law copyright in the Tape.

87. By reason of the conduct alleged in this counterclaim, EMI Records has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$200,000, the exact amount to be determined at trial, and is entitled to its damages, and punitive damages of \$300,000.

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WHEREFORE, defendant EMI Records, Limited demands judgment as follows:

1. Dismissing the complaint as against defendant EMI Records, Limited, together with the costs and disbursements of the action.
2. On its first, second, third and fourth counterclaims, and each of them, that Big Seven Music Corp., Adam VIII, Ltd., Morris Levy, their agents, officers, representatives, attorneys, successors and assigns and all those persons in active concert or participation with each or any of them be permanently restrained and enjoined from manufacturing, promoting, distributing, selling or offering to sell, or causing to be manufactured, promoted, distributed, sold or offered for sale any recording of a John Lennon music performance.
3. On its first counterclaim, compensatory damages in an amount exceeding \$200,000, the exact amount to be determined at trial.
4. On its second counterclaim, compensatory damages in an amount exceeding \$200,000, the exact amount to be determined at trial, and punitive damages in the amount of \$300,000.
5. On its third counterclaim, compensatory damages in an amount exceeding \$200,000, the exact amount to be determined at trial, and punitive damages in the amount of \$300,000.
6. On its fourth counterclaim, compensatory damages in an amount exceeding \$200,000, the exact amount to be determined at trial, and punitive damages in the amount of \$300,000.
7. On its fifth counterclaim, compensatory damages in an amount exceeding \$200,000, the exact amount to be determined at trial, and punitive damages in the amount of \$300,000.

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8. Such other and further relief as the Court may deem just and proper.

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(202) 331-4500

By *E. Barrett Prettyman, Jr.*
E. Barrett Prettyman, Jr.

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(212) 246-2060

By *Solomon Granett*
Solomon Granett per *JS*

Attorneys for Defendant
EMI Records, Limited

Dated: October 23, 1975.

Second Amended Answer & Counterclaim of Defendant Capitol.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS,
INC., HAROLD SEIDER, CAPITOL
RECORDS, INC. and EMI RECORDS,
LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional
Defendant on
Counterclaims.

75 Civ. 1116
(LFM)

SECOND AMENDED ANSWER AND
COUNTERCLAIMS OF CAPITOL
RECORDS, INC.

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Defendant Capitol Records, Inc. ("Capitol"), by its attorneys, hereby responds to plaintiffs' amended complaint, amends its answer, and counterclaims as follows:

1. Admits that plaintiffs purport to bring this action under Section 4 of the Clayton Act (15 U.S.C. § 15) and that plaintiffs claim that defendants and others violated the anti-trust laws of the United States (15 U.S.C. § 1 et seq.), and denies the other allegations of paragraph 1 of the complaint.

2. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 2 and 3 of the complaint, except admits the allegations of the first sentence of paragraph 2 of the complaint and admits the allegations of the first sentence of paragraph 3 of the complaint.

Second Amended Answer of Capitol.

3. Admits that defendant John Lennon ("Lennon") is a well-known singer and songwriter of popular music, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 4 of the complaint.

4. Admits that defendant Apple Records, Inc. ("Apple") is a New York corporation, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 5 of the complaint.

5. Admits that Capitol is a Delaware corporation, is authorized to do business in New York, maintains offices for the conduct of business in the City, County and State of New York, and distributes throughout the United States phonograph records and tapes of popular music, and denies the other allegations of paragraph 6 of the complaint.

6. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the complaint.

7. Admits that defendant EMI Records, Limited ("EMI Records") is an English corporation and denies the other allegations of paragraph 8 of the complaint.

8. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 9 and 10 of the complaint.

9. Admits that an album entitled "Walls & Bridges" was released, refers thereto for the contents thereof, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 11 of the complaint.

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10. Admits that an album entitled "Roots" was heretofore advertised on television, and denies knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the complaint.

11. Denies the allegations of paragraphs 23 and 24 of the complaint, except admits that Capitol sent a telegram, a copy of which is attached to the complaint as Exhibit E, and refers thereto for the terms thereof.

12. Denies the allegations of paragraph 25 of the complaint, except admits that Capitol received a telegram, a copy of which is attached to the complaint as Exhibit F, and refers thereto for the terms thereof.

13. Denies the allegations of paragraph 26 of the complaint, except admits that Capitol sent a telegram, a copy of which is attached to the complaint as Exhibit G, and refers thereto for the terms thereof.

14. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the complaint, except admits having been advised that Lennon sent a telegram.

15. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the complaint, except admits having been advised that defendant Harold Seider ("Seider") sent a telegram.

16. Admits that Capitol sent telegrams to certain television stations and others, refers thereto for the terms thereof, and denies the other allegations of paragraph 29 of the complaint.

17. Admits that Capitol has released, promoted and sold and is promoting and selling throughout the United States, an

Second Amended Answer of Capitol.

album entitled "John Lennon Rock 'n' Roll" ("Capitol Album"), and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 30 of the complaint.

18. Admits that a sum used by Capitol in connection with the Capitol Album is \$5.98, states that Capitol is distributing the Capitol Album in accordance with proper marketing practices, and denies the other allegations of paragraph 31 of the complaint.

19. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the complaint.

20. Incorporates herein paragraphs 1 - 19 hereof, inclusive, as its answer to paragraph 33 of the complaint.

21. Denies the allegations of paragraphs 34, 35, 36 and 37 of the complaint.

22. Incorporates herein paragraphs 1-19 hereof, inclusive, as its answer to paragraph 38 of the complaint.

23. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 39 and 40 of the complaint.

24. Incorporates herein paragraphs 1-19 hereof, inclusive, as its answer to paragraph 41 of the complaint.

25. Denies the allegations of paragraphs 42, 43, 44 and 45 of the complaint.

26. Incorporates herein paragraphs 1-19 hereof, inclusive, as its answer to paragraph 46 of the complaint.

27. Denies the allegations of paragraphs 47, 48 and 49 of the complaint.

28. Incorporates herein paragraphs 1-19 hereof, inclusive, as its answer to paragraph 50 of the complaint.

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29. Denies the allegations of paragraphs 51, 53 and 54 of the complaint.

30. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 52 of the complaint.

31. Incorporates herein paragraph 1-19 hereof, inclusive, as its answer to paragraph 55 of the complaint.

32. States that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the complaint.

33. Denies the allegations of paragraph 57 of the complaint.

34. Incorporates herein paragraphs 1-19 hereof, inclusive, as its answer to paragraph 58 of the complaint.

35. Denies the allegations of paragraphs 59, 60, 61 and 63 of the complaint.

36. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 62 of the complaint.

37. Incorporates paragraphs 1-19 hereof, inclusive, as its answer to paragraph 64 of the complaint.

38. Denies the allegations of paragraphs 65 and 67 of the complaint.

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39. Denies that plaintiffs have suffered and will continue to suffer damage to their reputation and goodwill or have sustained and will continue to sustain a loss of profits and sales, and states that it lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 66 of the complaint.

FIRST AFFIRMATIVE DEFENSE:

40. The complaint fails to state a claim against Capitol upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

41. Plaintiffs had and have no right to cause the album of recorded music entitled "Roots" which is the subject of this action to be recorded, manufactured, distributed, advertised, promoted or sold, and plaintiffs therefore lack standing to bring this action.

THIRD AFFIRMATIVE DEFENSE:

42. Upon information and belief, plaintiff Big Seven Music Corp. ("Big Seven") has assigned to plaintiff Adam VIII, Ltd. ("Adam VIII"), all of the rights Big Seven purports to have in connection with the album entitled "Roots", and Big Seven therefore lacks standing to bring this action.

FOURTH AFFIRMATIVE DEFENSE:

43. The "master" recording of the selections contained in the album entitled "Roots" referred to in the complaint, and all antecedents of said "master," were and are paid for and owned by EMI Records.

44. At all times mentioned in the complaint, the "master" recording of the selections contained in the album

Second Amended Answer of Capitol.

entitled "Roots," and all antecedents of said "master," were, and they are, the property of EMI Records, and only EMI Records had the right to grant approval of or consent to use of said "master" or antecedents by plaintiffs.

45. At all times mentioned in the complaint, Capitol held and was the owner in the United States, and in other specified places, of exclusive rights to distribute, advertise, promote and sell phonograph records and tapes derived from said "master" recording and antecedents thereof owned by EMI Records.

46. At no time did EMI Records or Capitol approve or consent to the manufacture, distribution, advertising, promotion or sale by plaintiffs or either of them of phonograph records or tapes derived from said "master" recording or said antecedents, or derived from duplicates thereof, and any use thereof by plaintiffs was unauthorized and unlawful.

FIFTH AFFIRMATIVE DEFENSE:

47. If Apple purported to grant to plaintiffs, or either of them, rights as claimed by plaintiffs in the complaint herein, then such purported grant of rights was ineffectual and void by reason of the fact that Apple did not have the right or authority to grant to plaintiffs, or either of them, such rights.

SIXTH AFFIRMATIVE DEFENSE:

48. If Apple did have the right and authority to grant to plaintiffs the rights claimed by plaintiffs in the complaint herein, then, upon information and belief, any purported grant of such rights to plaintiffs through the acts of Lennon was void and ineffectual by reason of the fact that Lennon did not have power or authority to act for or on behalf of Apple and, upon information and belief, Lennon's lack of power or authority was known to plaintiffs at all times mentioned in the complaint.

Second Amended Answer of Capitol.

SEVENTH AFFIRMATIVE DEFENSE:

49. If Lennon, allegedly acting individually or on behalf of Apple, purported to grant to plaintiffs rights as alleged in paragraphs 13, 15 and 16 of the complaint and elsewhere therein, then, upon information and belief, such purported grant of rights was ineffectual, void and not binding, inasmuch as, upon information and belief, no consideration from plaintiffs passed or was promised by plaintiffs, or either of them, to Apple.

EIGHTH AFFIRMATIVE DEFENSE:

50. If Lennon purported to grant to plaintiffs rights as alleged in paragraphs 13, 15 and 16 of the complaint and elsewhere therein, then such alleged grant of rights was not binding on any of the defendants inasmuch as, upon information and belief, the same constituted an alleged grant of rights which were not to be performed or exercised within one year and hence any such purported grant of rights was void and unenforceable under applicable statutes of frauds, including § 5-701, New York General Obligations Law.

NINTH AFFIRMATIVE DEFENSE:

51. Upon information and belief, the alleged agreement of October, 1974, referred to in paragraph 13 of the complaint and elsewhere therein, if such occurred, was void and unenforceable by reason of being vague, indefinite, incomplete and otherwise without the specificity required by law to comprise an enforceable agreement or undertaking.

TENTH AFFIRMATIVE DEFENSE:

52. If it is the claim of plaintiffs that, in making the agreement alleged in paragraphs 13, 15 and 16 of the complaint

Second Amended Answer of Capitol.

and elsewhere therein, Lennon granted to plaintiffs the right to use his name and likeness in connection with the sale of phonograph records, then such alleged grant of rights was not binding, inasmuch as, upon information and belief, such alleged grant of rights was not made in writing duly signed by Lennon and hence was unenforceable under § 50 and § 51, New York Civil Rights Law.

ELEVENTH AFFIRMATIVE DEFENSE:

53. The Court lacks jurisdiction over the claims asserted in paragraphs 38-67, inclusive, of the complaint, because the claims asserted in paragraphs 33-37, inclusive, of the complaint are insubstantial.

FIRST COUNTERCLAIM AGAINST BIG SEVEN,
ADAM VIII AND MORRIS LEVY - LANHAM ACT:

54. Capitol makes this counterclaim pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1970), and the jurisdiction conferred upon the Court by Section 39 of said Act, 15 U.S.C. § 1121 (1970), to recover its damages for and obtain an injunction against violations of said Section 43(a) by Big Seven, Adam VIII and Morris Levy ("Levy").

55. This counterclaim arises out of the same transactions and occurrences which are the subject matter of plaintiffs complaint herein, and does not require for its adjudication the presence of any third party over whom the Court cannot acquire jurisdiction.

56. Capitol hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5 and 7 hereof.

57. Pursuant to Rule 13(h), Fed. R. Civ. P., Levy, upon information and belief the President of Big Seven and Adam VIII

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since at least October 1973 and otherwise engaged in the music-entertainment business at all times relevant hereto, is hereby joined as a defendant to this counterclaim. Levy maintains a business office and conducts business in the City, County and State of New York.

58. On or about January 26, 1967, and prior to any of the acts of Big Seven, Adam VIII and Levy complained of herein, Lennon and the other members of the music group known as the Beatles entered into a written agreement with The Gramophone Company, Limited ("Lennon-EMI Records agreement"). On or about July 1, 1973, The Gramophone Company, Limited, changed its name to EMI Records and all of the former's rights in the Lennon-EMI Records agreement became and remain vested in EMI Records. The Lennon-EMI Records agreement is for a term ending January 26, 1976. Pursuant to the Lennon-EMI Records agreement, Lennon granted to EMI Records the exclusive, world-wide rights, among other things, to manufacture, distribute and sell recordings of Lennon music performances, as well as the exclusive, world-wide rights to use Lennon's name and likeness in connection with said manufacture, distribution and sale.

59. On or about September 1, 1969, and prior to any of the acts of Big Seven, Adam VIII and Levy complained of herein, EMI Records entered into a written agreement with Apple ("EMI Records-Apple agreement"), wherein EMI Records granted to Apple, until January 26, 1976, among other things, exclusive rights to manufacture, distribute and sell in the United States, and in other specified places, recordings of Lennon music performances, and the exclusive rights to use Lennon's name and likeness in connection with said manufacture, distribution and sale.

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60. On or about September 1, 1969, Apple entered into an agreement with Capitol and a subsidiary of Capitol which subsequently merged with Capitol ("Apple-Capitol agreement"), wherein Apple granted to Capitol and Capitol's former subsidiary, until January 26, 1976, among other things, the exclusive rights to distribute and sell in the United States, and in other specified places, recordings of Lennon music performances, and the exclusive rights to use Lennon's name and likeness in connection with said distribution and sale.

61. The Lennon-EMI Records agreement, the EMI Records-Apple agreement, and the Apple-Capitol agreement have all been in force and effect continuously since executed and all remain in force and effect.

62. Lennon is and at all times relevant hereto was a celebrated musician, entertainer, performer, composer and recording star of unique talents, who has become and continues to be one of the best known and most successful music-entertainment personalities of our time.

63. The rights to manufacture, distribute and sell recordings of Lennon music performances and to use Lennon's name and likeness in connection therewith are property rights of extraordinary value, being worth millions of dollars.

64. Capitol and EMI Records have devoted very substantial and continuing financial and human resources to develop, exploit and utilize their exclusive contractual rights with regard to recordings of Lennon music performances. Capitol and EMI Records have applied extensive and successful production, promotional, marketing and distribution techniques and efforts in connection with their respective rights in recordings of

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Lennon music performances, involving expenditures by them of millions of dollars. Through these efforts, Capitol and EMI Records have been and are in large part responsible for the growth and maintenance of the huge market which has been created for recordings of Lennon music performances.

65. Upon information and belief, in or about November 1974, Lennon, at Levy's request, gave Levy possession of a rough, preliminary tape recording of certain Lennon music performances ("Tape"), for the sole purpose of allowing Levy to listen to said Tape. The music performances recorded on the Tape were Lennon's musical interpretations of a number of selections of "rock and roll" music. The preliminary, roughly edited quality of the Tape was such that no record company would ordinarily have issued it to the public without first causing it to be edited and processed to produce a "master" recording of technically satisfactory sound quality. The Tape was subsequently supplemented, processed and edited into a "master" recording from which phonograph records and commercial tapes were intended to be produced, manufactured, marketed, distributed and sold pursuant to and under the terms of the Lennon-EMI Records, EMI Records-Apple and Apple-Capitol agreements.

66. The costs of producing, recording, processing and editing the music performances on the Tape, and of other Lennon music performances not on the Tape, and the costs of the "master" recording intended to be made, and which was made, in connection therewith, were very substantial and were paid by EMI Records. The Tape was the exclusive property of EMI Records. At no time did Lennon, Apple, EMI Records, or Capitol authorize or purport to authorize Big Seven, Adam VIII or Levy, or any other person or

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entity, to use the Tape for the purpose of producing, duplicating, manufacturing, promoting, distributing or selling any recording of Lennon music performances.

67. In 1973, 1974, and early 1975, Capitol undertook extensive preparations to release, distribute and sell an album of Lennon "rock and roll" music performances ("Capitol Album") containing, among other recordings of Lennon music performances, some but not all of the Lennon music performances on the Tape. The Capitol Album was withheld from release pending Capitol's completion, in early 1975, of its pre-release preparations for the Capitol Album, including Capitol's pre-release publicity campaign which, as of February 1975, was well underway. The Capitol Album was released in February 1975 and entitled "John Lennon Rock 'n' Roll".

68. Upon information and belief, prior to the release of the Capitol Album, and in or about February 1975, Big Seven, Adam VIII and Levy began to promote publicly, offer for sale and sell to the public, throughout the United States, a phonograph album recording and a tape recording of Lennon music performances, entitled "John Lennon Sings the Great Rock & Roll Hits -- Roots" ("Roots Album"). Upon information and belief, the Roots Album was produced from the Tape owned by EMI Records of which Levy obtained possession in November 1974, and not from the subsequently supplemented, processed and edited "master" recording. At no time did Lennon, Apple, EMI Records or Capitol authorize or purport to authorize Big Seven, Adam VIII or Levy, or any other person or entity, to manufacture, promote, distribute or sell the Tape, "master" recording, or Roots Album.

69. In promoting and selling the Roots Album, Big Seven, Adam VIII and Levy have extensively and commercially

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exploited recordings of Lennon music performances, and have extensively and commercially used Lennon's name, likeness and music performances, and have falsely represented and implied to the public that the Roots Album was and is authorized by Lennon, Apple, EMI Records and Capitol. The foregoing uses, descriptions, representations, and implications were made by Big Seven, Adam VIII and Levy without the consent of Lennon, Apple, EMI Records, Capitol, or any of them. The foregoing uses, descriptions, representations and implications by Big Seven, Adam VIII and Levy have deceived and confused and are deceiving and confusing the public, including purchasers and prospective purchasers of Lennon albums, into believing that the Roots Album was authorized by Lennon, Apple, EMI Records and Capitol, or any of them.

70. Big Seven's, Adam VIII's and Levy's promotion and sale of the Roots Album, including but not limited to the record jacket thereof and their promotional and sales techniques and statements in connection with the Roots Album, and the Roots Album itself, are of inferior quality and do not meet the high standards of quality the public has come to expect of a recording of Lennon music performances, and of recordings owned, promoted, distributed and sold by EMI Records and Capitol. In addition, the Roots Album jacket included advertising for other performers and other albums, a practice in which Capitol and EMI Records would not engage in connection with Lennon albums. The inferior quality of the Roots Album and of its promotion and sale by Big Seven, Adam VIII and Levy, and the impressions of cheapness produced thereby, have diminished Lennon's stature and the stature of EMI Records and Capitol in the minds of the public, including purchasers and prospective purchasers of Lennon albums. Said

Second Amended Answer of Capitol.

diminution in the stature of Lennon, EMI Records and Capitol has significantly reduced the value of Capitol's rights in recordings of Lennon music performances, and otherwise has damaged Capitol.

71. As a result of Big Seven's, Adam VIII's and Levy's conduct related to the Roots Album, substantial sales of the Capitol Album have been lost and Capitol accordingly has obtained smaller revenues attributable to the Capitol Album than it would have received but for the unauthorized, deceptive and confusion-producing acts of Big Seven, Adam VIII and Levy in connection with the Roots Album.

72. The unauthorized, false, deceptive and confusion-producing uses, descriptions, representations and implications by Big Seven, Adam VIII and Levy related to the Roots Album were made by them in connection with the manufacture, promotion and sale of the Roots Album in interstate commerce throughout the United States, in violation of Capitol's rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1970).

73. By reason of the conduct alleged in this counterclaim, Capitol has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$300,000, the exact amount to be determined at trial, and is entitled to its damages and injunctive relief from further injury.

SECOND COUNTERCLAIM AGAINST
BIG SEVEN, ADAM VIII AND MORRIS LEVY
-- UNFAIR COMPETITION:

74. Capitol hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

75. Big Seven, Adam VIII and Levy, knowing they lacked any authorization or right to do so, intentionally and maliciously,

Second Amended Answer of Capitol.

and in knowing disregard of the rights of Capitol and others, manufactured, promoted and sold the Roots Album throughout the United States. Big Seven's, Adam VIII's and Levy's actions in connection with the Roots Album were and are in wrongful, intentional and malicious derogation of Capitol's contractual rights. As a result of Big Seven's, Adam VIII's and Levy's wrongful, intentional and malicious acts of unfair competition alleged in this counterclaim, Capitol has lost and continues to lose substantial sums due to the diminished sales of and revenues from the Capitol Album, the market for the Capitol Album and other recordings of Lennon music performances has been permanently damaged, and Capitol has been otherwise damaged.

76. By reason of the conduct alleged in this counterclaim, Capitol has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount which exceeds \$300,000, the exact amount to be established at trial, and is entitled to its damages, and punitive damages of \$400,000, and injunctive relief from further injury.

THIRD COUNTERCLAIM AGAINST BIG
SEVEN, ADAM VIII AND MORRIS LEVY
-- MISAPPROPRIATION:

77. Capitol hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

78. Big Seven, Adam VIII and Levy intentionally and maliciously misappropriated and exploited the Tape owned by EMI Records, and EMI Records' and Capitol's rights in connection with recordings of Lennon music performances, for Big Seven's, Adam VIII's and Levy's own commercial use and advantage. As a result of Big Seven's, Adam VIII's and Levy's intentional and

Second Amended Answer of Capitol.

malicious misappropriation and exploitation of the Tape and of EMI Records' and Capitol's rights in connection with recordings of Lennon music performances, Capitol has been deprived of the profits it would have made but for Big Seven's, Adam VIII's and Levy's misappropriation and exploitation of the Tape and said rights, and Big Seven, Adam VIII and Levy have wrongfully profited from their misappropriation and exploitation of the Tape and said rights.

79. By reason of the conduct alleged in this counter-claim, Capitol has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$300,000, the exact amount to be established at trial, and is further entitled to punitive damages of \$400,000, and injunctive relief from further injury.

FOURTH COUNTERCLAIM AGAINST
BIG SEVEN, ADAM VIII AND MORRIS LEVY
-- INTERFERENCE WITH ADVANTAGEOUS RELATIONS:

80. Capitol hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

81. At all times material hereto, Big Seven, Adam VIII and Levy knew that Lennon was party to a contractual agreement with EMI Records pursuant to which agreement EMI Records owns exclusive world-wide rights with regard to recordings of Lennon music performances. Big Seven, Adam VIII and Levy knew at all times material hereto that no person or entity could lawfully enter into an agreement with Lennon to exploit commercially recordings of Lennon music performances without the authorization of EMI Records. Big Seven, Adam VIII and Levy knew at all times material hereto that the Lennon-EMI Records agreement, the EMI

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Records-Apple agreement and the Apple-Capitol agreement were in force and effect.

82. Notwithstanding Big Seven's, Adam VIII's and Levy's knowledge of the business relationships between and among Lennon, EMI Records, Apple and Capitol; Big Seven, Adam VIII and Levy sought to induce Lennon and Apple to breach Lennon's and Apple's respective agreements with EMI Records and Capitol, and otherwise sought to interfere with the advantageous business relations between and among Lennon, EMI Records, Apple and Capitol.

83. The acts undertaken by Big Seven, Adam VIII and Levy to induce said breaches and interfere with said advantageous relations include but are not limited to the facts set forth in this counterclaim. Said acts were undertaken for the purposes of disrupting, interrupting and terminating the advantageous business relations between and among Lennon, EMI Records, Apple and Capitol by, among other things, seeking to cause antagonism and disputes between and among them. Said acts of Big Seven, Adam VIII and Levy were undertaken to the end that they might secure for themselves economic advantage at the expense of, and in derogation of the contractual and other advantageous business relations between and among, Lennon, EMI Records, Apple and Capitol. Said acts of Big Seven, Adam VIII and Levy were undertaken intentionally and maliciously, for the purpose, among others, of making, and said acts did make, performance of the Lennon-EMI Records agreement and the Apple-Capitol agreement impossible with respect to the Capitol Album, since the manufacture, promotion, distribution and sale of the Roots Album destroyed the market exclusivity that the Capitol Album would otherwise have had, and said acts have otherwise injured Capitol and EMI Records. Moreover, the benefits flowing to Capitol pursuant to its contractual rights have been

Second Amended Answer of Capitol.

significantly impaired due to the reduced sales of the Capitol Album caused by said acts, and significantly impaired by the injury to and depreciation of the market for both the Capitol Album and other recordings of Lennon music performances caused by said acts.

84. By reason of the conduct alleged in this counterclaim, Capitol has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$300,000, the exact amount to be determined at trial, and is entitled to its damages, and punitive damages of \$400,000, and injunctive relief from further injury.

FIFTH COUNTERCLAIM AGAINST BIG
SEVEN, ADAM VIII AND MORRIS LEVY --
COPYRIGHT:

85. Capitol hereby repeats and realleges, and incorporates herein, each allegation of paragraphs 2, 5, 7, 55 and 57-70, inclusive, hereof.

86. The music on the Tape embodies the unique artistry and rendition which only Lennon could contribute thereto. Lennon's unique artistry and rendition on the Tape made the Tape exceedingly valuable and the right to publish the Tape or any part thereof exceedingly valuable. From the time the music on the Tape was first recorded, continuously to date, EMI Records has owned exclusively the common law copyright in the Tape. Under said common law copyright, EMI Records owned the exclusive right of first publication of the Tape and every part thereof. By publishing the Tape and the Roots Album, Big Seven, Adam VIII and Levy intentionally and maliciously infringed EMI Records' common law copyright in the Tape. Pursuant to Capitol's

Second Amended Answer of Capitol.

contractual rights, the lawful use of said common law copyright was an extremely important and valuable asset of and economic advantage to Capitol.

87. By reason of the conduct alleged in this counterclaim, Capitol has been and continues to be damaged by Big Seven, Adam VIII and Levy, jointly and severally, in an amount exceeding \$300,000, the exact amount to be determined at trial, and is entitled to its damages and punitive damages of \$400,000.

WHEREFORE, defendant Capitol Records, Inc., demands judgment as follows:

1. Dismissing the complaint as against defendant Capitol Records, Inc., together with the costs and disbursements of the action.

2. On its first, second, third and fourth counterclaims, and each of them, that Big Seven Music Corp., Adam VIII, Ltd., Morris Levy, their agents, officers, representatives, attorneys, successors and assigns and all those persons in active concert or participation with each or any of them be permanently restrained and enjoined from manufacturing, promoting, distributing, selling or offering to sell, or causing to be manufactured, promoted, distributed, sold or offered for sale any recording of a John Lennon music performance.

3. On its first counterclaim, compensatory damages in an amount exceeding \$300,000, the exact amount to be determined at trial.

4. On its second counterclaim, compensatory damages in an amount exceeding \$300,000, the exact amount to be determined at trial, and punitive damages in the amount of \$400,000.

Second Amended Answer of Capitol.

5. On its third counterclaim, compensatory damages in an amount exceeding \$300,000, the exact amount to be determined at trial, and punitive damages in the amount of \$400,000.

6. On its fourth counterclaim, compensatory damages in an amount exceeding \$300,000, the exact amount to be determined at trial, and punitive damages in the amount of \$400,000.

7. On its fifth counterclaim, compensatory damages in an amount exceeding \$300,000, the exact amount to be determined at trial, and punitive damages in the amount of \$400,000.

8. Such other and further relief as the Court may deem just and proper.

HOGAN & HARTSON
815 Connecticut Avenue
Washington, D. C. 20006
(202) 331-4500

By *E. Barrett Prettyman, Jr.*
E. Barrett Prettyman, Jr.

GRANETT & GOLD, P.C.
1350 Avenue of the Americas
New York, New York 10019
(212) 246-2060

By *Solomon Granett*
Solomon Granett per *JS*

Attorneys for Defendant
Capitol Records, Inc.

Dated: October 23, 1975.

Answer to Amended Complaint & Counterclaim
of Defendant Apple.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS, LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional
Party Named in
Counterclaim.

----- -x

75 Civ. 1116
(LFM)

ANSWER TO AMENDED COM-
PLAINT AND COUNTER-
CLAIM OF APPLE
RECORDS, INC.

OCT 24 PM '75

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Defendant, APPLE RECORDS, INC. ("APPLE"),

by its attorneys, Cleary, Gottlieb, Steen & Hamilton, for
its answer to the amended complaint served on October 17, 1975:

1. Admits that plaintiffs purport to bring Count I
of this action under Section 4 of the Clayton Act, 15
U.S.C. § 15, and purport to base Counts II through VIII
of this action on "pendent jurisdiction" and denies
each and every other allegation of paragraph 1 of the
complaint.

2. Denies that it has knowledge or informa-
tion sufficient to form a belief as to the truth of
the allegations contained in paragraphs 2 and 3 of
the complaint.

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Answer of Defendant Apple.

3. Admits the allegations contained in paragraphs 4 and 5 of the complaint, except denies that Apple is actively engaged in interstate or foreign commerce or in doing business in the City, County and State of New York.

4. Admits that Capitol Records, Inc. ("Capitol") maintains an office for the conduct of business in the City, County and State of New York and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 6 of the complaint.

5. Admits that Harold Seider is an attorney and that he has, at certain times, acted as an advisor to John Lennon ("Lennon") and denies the other allegations of paragraph 7 of the complaint.

6. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

7. Admits that on October 12, 1973 an action entitled Big Seven Music Corp. v. MacIen Music, Inc., et al., 70 Civ. 1348 (S.D.N.Y.), was settled in open court; that a true copy of the transcript of the hearing embodying the terms of the said "October 1973 settlement" is attached to the complaint as Exhibit A; respectfully refers to said transcript for the terms

Answer of Defendant Apple.

thereof; and denies each and every other allegation contained in paragraph 9 of the complaint.

8. Admits the allegations of paragraph 10 of the complaint.

9. Denies each and every allegation of paragraph 11 of the complaint that pertains to or is intended to refer to Apple or Lennon, except admits that the album "Walls and Bridges", released in September, 1974, did not include "You Can't Catch Me", that it included a song entitled "Ya, Ya", and that it did not include any other Big Seven Music Corp. ("Big Seven") song.

10. Admits the allegations of paragraph 12 of the complaint and avers and alleges that Apple was not connected with or responsible for the performance of any acts under the settlement to which reference is made in paragraph 9 of the complaint and that, as reflected in a letter dated December 31, 1974, (a copy of which is attached to the complaint as Exhibit C), Big Seven was offered its choice of three master recordings for licensing from a list of seven master recordings owned or controlled by Apple Records Inc., a California corporation

11. Denies each and every allegation of paragraphs 13, 14, 15 and 16 of the complaint that pertains to or is intended to refer to Apple or Lennon, and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

Answer of Defendant Apple.

12. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

13. Upon information and belief, admits that Big Seven received a letter from the attorneys for Lennon offering to license three selections to Big Seven and that a true copy of said letter is attached to the complaint as Exhibit C; refers to Exhibit C for the terms thereof; denies that said attorneys were acting for Apple; and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 18 of the complaint.

14. Upon information and belief, admits that the attorneys for Lennon received a letter from Morris Levy ("Levy") (dated January 9, 1975) responding to their letter (dated December 31, 1974), that a copy of Levy's letter is attached to the complaint as Exhibit D, and that a portion of said response is quoted in paragraph 19 of the complaint; and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 19 of the complaint.

15. Upon information and belief, denies the allegations of paragraph 20 of the complaint.

16. Denies that it has knowledge or information sufficient to form a belief as to the truth of

Answer of Defendant Apple.

the allegations contained in paragraphs 21, 22, 23, 24, 25 and 26 of the complaint.

17. Admits the allegations of paragraph 27 of the complaint.

18. Upon information and belief, admits the allegations contained in paragraph 28 of the complaint.

19. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint.

20. Admits that Capitol has released and has begun to promote and sell in interstate commerce throughout the United States an album entitled "John Lennon Rock 'n Roll" (the "Capitol album"); on information and belief, denies that the Capitol album was made from the same tapes as was the album allegedly manufactured, released and marketed by Adam VIII, Ltd. ("Adam VIII"); and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 30 of the complaint.

21. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint.

22. Denies each and every allegation of paragraph 32 of the complaint that pertains to or is

Answer of Defendant Apple.

intended to refer to Apple or Lennon, and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

23. Incorporates herein paragraphs 1-22 hereof as its answer to paragraph 33 of the complaint.

24. Denies each and every allegation of paragraphs 34, 35, 36 and 37 of the complaint that pertains to or is intended to refer to Apple or Lennon, and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

25. Incorporates herein paragraphs 1-22 hereof as its answer to paragraph 38 of the complaint.

26. Denies each and every allegation of paragraphs 39 and 40 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

27. Incorporates herein paragraphs 1-22 hereof as its answer to paragraph 41 of the complaint.

28. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the complaint.

Answer of Defendant Apple.

29. Denies each and every allegation contained in paragraph 43 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

30. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the complaint.

31. Denies that Apple or Lennon was induced to breach the alleged "October 1974 agreement", denies the existence of said agreement, alleges and avers that plaintiffs do not claim that Apple or Lennon is liable for any damages allegedly incurred by plaintiffs as a result of the acts complained of in Count III alleged in the complaint and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 45 of the complaint.

32. Incorporates herein paragraphs 1 - 22 hereof as its answer to paragraph 46 of the complaint.

33. Denies that Apple or Lennon was induced to breach the alleged "October 1974 agreement," denies the existence of said agreement, and denies that it has knowledge or information sufficient to form a belief as

Answer of Defendant Apple.

to the truth of the other allegations contained in paragraphs 47 and 48 of the complaint.

34. Alleges and avers that plaintiffs do not claim that Apple or Lennon is liable for any damages allegedly incurred by plaintiffs as a result of the acts complained of in Count IV alleged in the complaint and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 49 of the complaint.

35. Incorporate herein paragraphs 1 - 22 hereof as its answer to paragraph 50 of the complaint.

36. Denies each and every allegation contained in paragraph 51 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

37. Denies each and every allegation contained in the first sentence of paragraph 52 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 52 of the complaint.

Answer of Defendant Apple.

38. Denies each and every allegation contained in paragraph 53 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

39. Denies each and every allegation contained in paragraph 54 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

40. Incorporates herein paragraphs 1-22 hereof as its answer to paragraph 55 of the complaint.

41. Alleges and avers that plaintiffs do not claim that Apple is liable for any damages allegedly incurred by plaintiffs as a result of the acts complained of in Count VI alleged in the complaint, denies each and every allegation contained in paragraphs 56 and 57 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

42. Incorporates herein paragraphs 1-22 hereof as its answer to paragraph 58 of the complaint.

Answer of Defendant Apple.

43. Denies each and every allegation contained in paragraphs 59, 60 and 61 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

44. Denies each and every allegation contained in the first sentence of paragraph 62 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 62 of the complaint.

45. Denies each and every allegation contained in paragraph 63 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

46. Incorporates herein paragraphs 1 - 22 hereof as its answer to paragraph 64 of the complaint.

47. Denies each and every allegation contained in paragraphs 65 or 66 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

Answer of Defendant Apple.

48. Denies each and every allegation contained in paragraph 67 of the complaint as pertains to or is intended to refer to Apple or Lennon and denies that it has knowledge or information sufficient to form a belief as to the truth of the other allegations contained therein.

49. Apple denies that plaintiffs are entitled to the relief sought in their complaint or to any of such relief or to any other relief against Apple.

FIRST AFFIRMATIVE DEFENSE

50. The complaint fails to state a claim against Apple upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

51. Plaintiffs had and have no right to cause the album entitled "Roots" which is the subject of this action to be recorded, manufactured, distributed, advertised, promoted or sold, and plaintiffs therefore lack standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

52. Upon information and belief, Big Seven has assigned to Adam VIII all of the rights Big Seven purports to have in connection with the album entitled "Roots", and Big Seven therefore lacks standing to bring this action.

Answer of Defendant Apple.

FOURTH AFFIRMATIVE DEFENSE

53. The alleged "October 1974 agreement" is void and unenforceable under the applicable Statute of Frauds by reason of the lack of a sufficient writing.

FIFTH AFFIRMATIVE DEFENSE

54. The alleged "October 1974 agreement" is void and unenforceable by reason of its lack of specificity, definiteness and completeness.

SIXTH AFFIRMATIVE DEFENSE

55. The alleged "October 1974 agreement" is void and unenforceable because it lacks consideration.

SEVENTH AFFIRMATIVE DEFENSE

56. Neither Apple nor Lennon had the right authority to grant to plaintiffs rights claimed by the plaintiffs in the complaint herein without the consent of EMI Records, Limited. Levy and Big Seven and Adam VIII knew or should have known that such consent was necessary and had not been granted. Therefore, plaintiffs can assert no claims derived from the alleged "October 1974 agreement."

EIGHTH AFFIRMATIVE DEFENSE

57. If Apple did have the right and authority to grant to plaintiffs the rights claimed by plaintiffs in the complaint, then, any purported grant of such rights to plaintiffs through the acts of Lennon was void and ineffectual by reason of the fact that

Answer of Defendant Apple.

Lennon did not have the authority to act unilaterally for and on behalf of Apple and upon information and belief, Lennon's lack of authority was known to plaintiffs at all times mentioned in the complaint.

NINTH AFFIRMATIVE DEFENSE

58. Big Seven was not authorized to assign the alleged "October 1974 agreement" or otherwise relicense or transfer the alleged rights or obligations thereunder and its assignment, relicense or transfer to Adam VIII: (a) was a material breach of said alleged agreement entitling Apple to rescind or terminate it, if, which Apple denies, such an agreement existed, and (b) was ineffective to convey any rights as against Apple to Adam VIII, if, which Apple denies, such an agreement between Apple and Big Seven existed.

TENTH AFFIRMATIVE DEFENSE

59. The Court lacks pendent jurisdiction over Counts II - VIII because Count I is insubstantial.

ELEVENTH AFFIRMATIVE DEFENSE

60. Levy, individually and on behalf of Big Seven and Adam VIII, intentionally and knowingly made false statements and omitted to make statements necessary in order to make the statements Levy made not misleading under the circumstances thereof in his dealings with Lennon, knowing that such statements and omissions were material and would be believed and relied upon by Lennon and Apple. Such misstatements

Answer of Defendant Apple.

and omissions included the following:

a) Levy falsely informed Lennon that Lennon and/or Apple were in material breach of the "October 1973 settlement".

b) Levy falsely stated to Lennon that he desired to obtain tapes of Lennon's performances from which the album entitled "Roots" was made solely for the purpose of listening to them.

c) Levy omitted to tell Lennon that he intended to use the aforesaid tapes in order to cause the manufacture, release, marketing, advertisement and sale of the Roots album.

61. The alleged "October 1974 agreement" was not binding on Apple by reason of fraud by Levy, Big Seven and Adam VIII.

COUNTERCLAIM

Apple Records, Inc. by its attorneys, Cleary Gottlieb, Steen & Hamilton, as and for its counterclaim against plaintiffs and Morris Levy alleges:

62. Defendant-counterclaimant, Apple Records, Inc. ("Apple"), is a corporation organized and existing under the law of New York.

63. Plaintiff-counterdefendant, Big Seven Music Corp. ("Big Seven") is, according to the allegations of paragraph 2 of the complaint, a corporation

Answer of Defendant Apple.

organized under the laws of New York and has its principal place of business in the City, County and State of New York.

64. Plaintiff-counterdefendant, Adam VIII, Ltd. ("Adam VIII") is, according to the allegations of paragraph 3 of the complaint, a corporation organized under the laws of New York and has its principal place of business in the City, County and State of New York.

65. Upon information and belief, since at least October 1973, Morris Levy ("Levy"), the additional party named in the counterclaim, has been the President of Big Seven and Adam VIII. Upon information and belief, Levy maintains an office for the transaction of business in the Southern District of New York.

66. This is a claim for fraud against Big Seven, Adam VIII and Levy pursuant to Federal Rule of Civil Procedure 13. Jurisdiction is provided by the doctrine of pendent jurisdiction as to counterclaims herein asserted against plaintiffs and by the doctrine of ancillary jurisdiction as to claims herein asserted against Levy.

67. Apple repeats and realleges paragraph 60 hereof.

68. As a result of the fraudulent conduct of Big Seven, Adam VIII and Levy, Apple has been

Answer of Defendant Apple.

injured in its business in an amount which cannot yet be ascertained, and such injury includes its cost in defending this action, including attorney's fees.

WHEREFORE, Apple Records, Inc. prays for:

A. A judgment dismissing the complaint in its entirety.

B. A judgment against each plaintiff and Levy, jointly and severally, on its counterclaim in an amount to be proven.

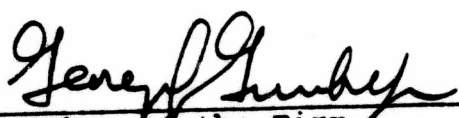
C. An assessment of costs and reasonable counsel fees in connection with this action and judgment therefor against each plaintiff and Levy, jointly and severally.

D. An assessment of punitive damages in the amount of \$50,000 on its counterclaim and judgment therefor against each plaintiff and Levy, jointly and severally.

E. Such other and further relief as the Court may deem just and proper under the circumstances.

Dated: New York, New York
October 24, 1975

CLEARY, GOTTLIEB, STEEN
& HAMILTON

By 
a Member of the Firm
Attorneys for Apple
Records, Inc.
One State Street Plaza
New York, New York 10004
(212) 344-0600

Additional Defendant Levy's Answer to
Counterclaims of Defendant EMI.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
OCT 23 2 29 PM '75
S.D. N.Y.

----- x

BIG SEVEN MUSIC CORP. and :
ADAM VIII, LTD., :
 :
Plaintiffs, :
 :
-against- : ANSWER TO COUNTERCLAIMS
 : OF EMI RECORDS LIMITED

JOHN LENNON, APPLE RECORDS, INC., :
HAROLD SEIDER, CAPITOL RECORDS, :
INC. and EMI RECORDS LIMITED, :
 :
Defendants, : 75 Civ. 1116 (LFM)
 :
-and- :
 :
MORRIS LEVY, :
 :
Additional Defendant :
on Counterclaim. :
 :
----- x

Additional defendant on the counterclaim Morris Levy ("Levy"), by his attorneys, Walter, Conston, Schurtman & Gumpel, P.C., for his answer to the counterclaims of defendant EMI Records Limited ("EMI"), alleges as follows:

1. Denies each and every allegation set forth in paragraph 54 of the counterclaim of EMI, except admits that EMI purports to state its counterclaim pursuant to Section 43(a) of the Lanham Act and bases its claim of jurisdiction on Section 39 of the Lanham Act.

2. Denies each and every allegation set forth in paragraph 57 of the counterclaim of EMI, except admits that Levy has been the President of Big Seven and Adam VIII since at least October, 1973, and has at all relevant times been engaged in the music-entertainment business, and has been served by EMI with a

Additional Defendant Levy's Answer.

third-party summons and complaint in this action, purportedly pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs 58, 59, 60 and 61 of EMI's counterclaim.

4. Denies each and every allegation set forth in paragraph 63 of EMI's counterclaim, except admits that under certain circumstances, the rights to manufacture, distribute and sell recordings of Lennon music performances and to use Lennon's name and likeness in connection therewith, are worth substantial sums of money.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 64 of EMI's counterclaim.

6. Denies each and every allegation set forth in paragraph 65 of EMI's counterclaim, except admits that John Lennon ("Lennon") gave Levy a tape recording of Lennon's musical interpretations of a number of selections of "rock and roll" music, and denies knowledge or information sufficient to form a belief as to the allegations contained in the last sentence of paragraph 65.

7. Denies each and every allegation set forth in paragraph 66 of EMI's counterclaim, except denies knowledge or information sufficient to form a belief as to the allegations contained in the first sentence thereof.

Additional Defendant Levy's Answer.

8. Denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 67 of EMI's counterclaim, except admits, on information and belief, that in or about February, 1975, EMI released an album entitled, "John Lennon Rock 'n' Roll".

9. Denies each and every allegation of paragraph 68 of EMI's counterclaim, except admits the first sentence thereof and further admits that the Roots album was produced from a tape delivered to plaintiffs by Lennon.

10. Denies each and every allegation set forth in paragraph 69 of EMI's counterclaim, except admits that plaintiffs have used Lennon's name, likeness and musical performance in connection with the promotion and sale of the Roots album.

11. Denies each and every allegation set forth in paragraph 70 of EMI's counterclaim, except admits that the Roots album jacket included advertising for other performers and other albums, and denies knowledge or information sufficient to form a belief as to whether EMI and Capitol Records, Inc. ("Capitol") would sell Lennon albums with jackets including advertising for other performers and other albums.

12. Denies each and every allegation set forth in paragraphs 71, 72 and 73 of EMI's counterclaim.

13. Levy for his answer to paragraph 74 of EMI's counterclaim, repeats paragraphs 1-12 herein.

14. Denies each and every allegation set forth in paragraphs 75 and 76 of EMI's counterclaim, except admits that plaintiffs manufactured and attempted to promote and sell the Roots album throughout the United States.

Additional Defendant Levy's Answer.

15. Levy for his answer to paragraph 77 of EMI's counterclaim, repeats paragraphs 1-12 herein.

16. Denies each and every allegation set forth in paragraphs 78 and 79 of EMI's counterclaim, except admits that plaintiffs sought to use the tape for their commercial use and advantage.

17. Levy for his answer to paragraph 80 of EMI's counterclaim, repeats paragraphs 1-12 herein.

18. Denies each and every allegation set forth in paragraphs 81, 82, 83 and 84 of EMI's counterclaim.

19. Levy for his answer to paragraph 85 of EMI's counterclaim, repeats paragraphs 1-12 herein.

Additional Defendant Levy's Answer.

20. Denies each and every allegation set forth in paragraphs 86 and 87 of EMI's counterclaim, except admits the first sentence of paragraph 86 and denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of paragraph 87.

FIRST DEFENSE

21. EMI's counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

22. All actions which Levy took or failed to take, and all statements which he made or failed to make, were in his capacity as an officer, employee and agent of plaintiffs, and not as an individual, and defendants at all times knew that they were dealing with plaintiffs and not Levy individually.

THIRD DEFENSE

23. EMI consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of Lennon's name, picture and likeness in connection therewith.

FOURTH DEFENSE

24. EMI knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of Lennon's name, picture and likeness in connection therewith.

FIFTH DEFENSE

25. EMI is guilty of laches.

SIXTH DEFENSE

26. Levy incorporates herein as a sixth defense the

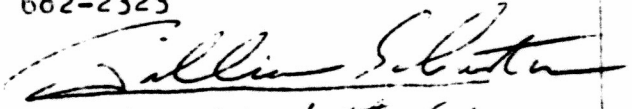
Additional Defendant Levy's Answer.

claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, Levy demands judgment dismissing EMI's counterclaims, together with the costs and disbursements of this action.

Dated: New York, New York
October 28, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

By 
A Member of the Firm

Plaintiffs' Reply to Counterclaim of
Defendant EMI.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCT 23 2 29 PM '75
S.D.C.F.N.Y.

----- x
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.

----- x

REPLY TO COUNTERCLAIMS
OF EMI RECORDS LIMITED

75 Civ. 1116 (LFM)

Plaintiffs Big Seven Music Corp. ("Big Seven") and
Adam VIII, Ltd. ("Adam VIII"), by their attorneys, Walter, Conston,
Schurtman & Gumpel, P.C., for their reply to the counterclaims of
defendant EMI Records Limited ("EMI") allege as follows:

1. Deny each and every allegation set forth in para-
graph 54 of the counterclaim of EMI, except admit that EMI pur-
ports to state its counterclaim pursuant to Section 43(a) of the
Lanham Act and bases its claim of jurisdiction on Section 39 of
the Lanham Act.

2. Deny each and every allegation set forth in para-
graph 57 of the counterclaim of EMI, except admit that Morris
Levy ("Levy") has been the President of Big Seven and Adam VIII
since at least October, 1973, has at all relevant times been

Plaintiffs' Reply.

engaged in the music-entertainment business, and has been served by EMI with a third-party summons and complaint in this action, purportedly pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

3. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs 58, 59, 60 and 61 of EMI's counterclaim.

4. Deny each and every allegation set forth in paragraph 63 of EMI's counterclaim, except admit that under certain circumstances, the rights to manufacture, distribute and sell recordings of Lennon music performances to use Lennon's name and likeness in connection therewith are worth substantial sums of money.

5. Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 64 of EMI's counterclaim.

6. Deny each and every allegation set forth in paragraph 65 of EMI's counterclaim, except admit that John Lennon ("Lennon") gave Levy a tape recording of Lennon's musical interpretations of a number of selections of "rock and roll" music, and deny knowledge or information sufficient to form a belief as to the allegations contained in the last sentence of paragraph 65.

7. Deny each and every allegation set forth in paragraph 66 of EMI's counterclaim, except deny knowledge or information sufficient to form a belief as to the allegations contained in the first sentence thereof.

Plaintiffs' Reply.

8. Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 67 of EMI's counterclaim, except admit, on information and belief, that in or about February, 1975, EMI released an album entitled, "John Lennon Rock 'n' Roll".

9. Deny each and every allegation of paragraph 68 of EMI's counterclaim, except admit the first sentence thereof and further admit that the Roots album was produced from a tape delivered to plaintiffs by Lennon.

10. Deny each and every allegation set forth in paragraph 69 of EMI's counterclaim, except admit that plaintiffs have used Lennon's name, likeness and musical performances in connection with the promotion and sale of the Roots album.

11. Deny each and every allegation set forth in paragraph 70 of EMI's counterclaim, except ~~admit~~ that the Roots album jacket included advertising for other performers and other albums, and deny knowledge or information sufficient to form a belief as to whether EMI and Capitol Records, Inc. ("Capitol") would sell Lennon albums with jackets including advertising for other performers and other albums.

12. Deny each and every allegation set forth in paragraphs 71, 72 and 73 of EMI's counterclaim.

13. Plaintiffs for their answer to paragraph 74 of EMI's counterclaim, repeat paragraphs 1-12 herein.

14. Deny each and every allegation set forth in paragraphs 75 and 76 of EMI's counterclaim, except admit that plaintiffs manufactured and attempted to promote and sell the Roots album throughout the United States.

Plaintiffs' Reply.

15. Plaintiffs for their answer to paragraph 77 of EMI's counterclaim, repeat paragraphs 1-12 herein.

16. Deny each and every allegation set forth in paragraphs 78 and 79 of EMI's counterclaim, except admit that plaintiffs sought to use the tape for their commercial use and advantage.

17. Plaintiffs for their answer to paragraph 80 of EMI's counterclaim, repeat paragraphs 1-12 herein.

18. Deny each and every allegation set forth in paragraphs 81, 82, 83 and 84 of EMI's counterclaim.

19. Plaintiffs for their answer to paragraph 85 of EMI's counterclaim, repeat paragraphs 1-12 herein.

20. Deny each and every allegation set forth in paragraphs 86 and 87 of EMI's counterclaim, except admit the first sentence of paragraph 86 and deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of paragraph 87.

FIRST DEFENSE

21. EMI's counterclaim fails to state a claim upon which relief can be granted.

Plaintiffs' Reply.

SECOND DEFENSE

22. EMI consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of Lennon's name, picture and likeness in connection therewith.

THIRD DEFENSE

23. EMI knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of Lennon's name, picture and likeness in connection therewith.

FOURTH DEFENSE

24. EMI is guilty of laches.

FIFTH DEFENSE

25. Plaintiffs incorporate herein as a fifth defense the claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, plaintiffs demand judgment dismissing EMI's counterclaims and awarding plaintiffs the relief sought in plaintiff's amended complaint herein.

Dated: New York, New York
October 28, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

-4- By: *William S. Schurman*
A Member of the Firm

**Plaintiffs' Reply to Counterclaim of
Defendant Capitol.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.
----- x

REPLY TO COUNTERCLAIMS OF
CAPITOL RECORDS, INC.

75 Civ. 1116 (LFM)

Plaintiffs Big Seven Music Corp. ("Big Seven") and
Adam VIII, Ltd. ("Adam VIII"), by their attorneys, Walter, Conston,
Schurtman & Gumpel, P.C., for their reply to the counterclaims of
defendant Capitol Records, Inc. ("Capitol"), allege as follows:

1. Deny each and every allegation set forth in para-
graph 54 of the counterclaim of Capitol, except admit that Capitol
purports to state its counterclaim pursuant to Section 43(a) of
the Lanham Act and bases its claim of jurisdiction on Section 39
of the Lanham Act.

Oct 23 2 29 PM '75
SOUTHERN DISTRICT OF NEW YORK
2

Plaintiffs' Reply.

2. Deny each and every allegation set forth in paragraph 55 of the counterclaim of Capitol, except admit that Morris Levy ("Levy") has been the President of Big Seven and Adam VIII since at least October, 1973, has at all relevant times been engaged in the music-entertainment business, and has been served by Capitol with a third-party summons and complaint in this action, purportedly pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

3. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs 58, 59, 60 and 61 of Capitol's counterclaim.

4. Deny each and every allegation set forth in paragraph 63 of Capitol's counterclaim, except admit that under certain circumstances, the rights to manufacture, distribute and sell recordings of Lennon music performances and to use Lennon's name and likeness in connection therewith are worth substantial sums of money.

5. Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 64 of Capitol's counterclaim.

6. Deny each and every allegation set forth in paragraph 65 of Capitol's counterclaim, except admit that John Lennon ("Lennon") gave Levy a tape recording of Lennon's musical interpretations of a number of selections of "rock and roll" music, and deny knowledge or information sufficient to form a belief as to the allegations contained in the last sentence of paragraph 65.

Plaintiffs' Reply.

7. Deny each and every allegation set forth in paragraph 66 of Capitol's counterclaim except deny knowledge or information sufficient to form a belief as to the allegations contained in the first sentence thereof.

8. Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 67 of Capitol's counterclaim, except admit, on information and belief, that in or about February, 1975, Capitol released an album entitled, "John Lennon Rock 'n' Roll".

9. Deny each and every allegation of paragraph 68 of Capitol's counterclaim, except admit the first sentence thereof and further admit that the Roots album was produced from a tape delivered to plaintiffs by Lennon.

10. Deny each and every allegation set forth in paragraph 69 of Capitol's counterclaim, except admit that plaintiffs have used Lennon's name, likeness and musical performances in connection with the promotion and sale of the Roots album.

11. Deny each and every allegation set forth in paragraph 70 of Capitol's counterclaim, except admit that the Roots album jacket included advertising for other performers and other albums, and deny knowledge or information sufficient to form a belief as to whether Capitol and EMI Records Limited ("EMI") would sell Lennon albums with jackets including advertising for other performers and other albums.

12. Deny each and every allegation set forth in paragraphs 71, 72 and 73 of Capitol's counterclaim.

Plaintiffs' Reply.

13. Plaintiffs for their answer to paragraph 74 of Capitol's counterclaim, repeat paragraphs 1-12 herein.

14. Deny each and every allegation set forth in paragraphs 75 and 76 of Capitol's counterclaim, except admit that plaintiffs manufactured and attempted to promote and sell the Roots album throughout the United States.

15. Plaintiffs for their answer to paragraph 77 of Capitol's counterclaim, repeat paragraphs 1-12 herein.

16. Deny each and every allegation set forth in paragraphs 78 and 79 of Capitol's counterclaim, except admit that plaintiffs sought to use the tape for their commercial use and advantage.

17. Plaintiffs for their answer to paragraph 80 of Capitol's counterclaim, repeat paragraphs 1-12 herein.

18. Deny each and every allegation set forth in paragraphs 81, 82, 83 and 84 of Capitol's counterclaim.

19. Plaintiffs for their answer to paragraph 85 of Capitol's counterclaim, repeat paragraphs 1-12 herein.

20. Deny each and every allegation set forth in paragraphs 86 and 87 of Capitol's counterclaim, except admit the first sentence of paragraph 86 and deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of paragraph 87.

FIRST DEFENSE

21. Capitol's counterclaim fails to state a claim upon which relief can be granted.

Plaintiffs' Reply.

SECOND DEFENSE

22. Capitol consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of Lennon's name, picture and likeness in connection therewith.

THIRD DEFENSE

23. Capitol knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of Lennon's name, picture and likeness in connection therewith.

FOURTH DEFENSE

24. Capitol is guilty of laches.

FIFTH DEFENSE

25. Plaintiffs incorporate herein as a fifth defense the claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, plaintiffs demand judgment dismissing Capitol's counterclaims and awarding plaintiffs the relief sought in plaintiffs' amended complaint herein.

Dated: New York, New York
October 28, 1975

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

By: *[Signature]*
-4- *A Member of the Firm*

Additional Defendant Levy's Answer to
Counterclaims of Defendant Capitol.

OCT 23 2 29 PM '75

S.D.N.Y.

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BIG SEVEN MUSIC CORP. and :
ADAM VIII, LTD., :

Plaintiffs, :

-against- :

JOHN LENNON, APPLE RECORDS, INC., :
HAROLD SEIDER, CAPITOL RECORDS, :
INC. and EMI RECORDS LIMITED, :

Defendants, :

-and- :

MORRIS LEVY, :

Additional Defendant :
on Counterclaim. :

----- x

ANSWER TO COUNTERCLAIMS
OF CAPITOL RECORDS, INC.

75 Civ. 1116 (LFM)

Additional defendant on the counterclaim Morris Levy ("Levy"), by his attorneys, Walter, Conston, Schurtman & Gumpel, P.C., for his answer to the counterclaims of defendant Capitol Records, Inc. ("Capitol"), alleges as follows:

1. Denies each and every allegation set forth in paragraph 54 of the counterclaim of Capitol, except admits that Capitol purports to state its counterclaim pursuant to Section 43(a) of the Lanham Act and bases its claim of jurisdiction on Section 39 of the Lanham Act.

2. Denies each and every allegation set forth in paragraph 57 of the counterclaim of Capitol, except admits that Levy has been the President of Big Seven and Adam VIII since at least

Additional Defendant Levy's Answer.

October, 1973, has at all relevant times been engaged in the music-entertainment business, and has been served by Capitol with a third-party summons and complaint in this action, purportedly pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs 58, 59, 60 and 61 of Capitol's counterclaim.

4. Denies each and every allegation set forth in paragraph 63 of Capitol's counterclaim, except admits that under certain circumstances, the rights to manufacture, distribute and sell recordings of Lennon music performances and to use Lennon's name and likeness in connection therewith, are worth substantial sums of money.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 64 of Capitol's counterclaim.

6. Denies each and every allegation set forth in paragraph 65 of Capitol's counterclaim, except admits that John Lennon ("Lennon") gave Levy a tape recording of Lennon's musical interpretations of a number of selections of "rock and roll" music, and denies knowledge or information sufficient to form a belief as to the allegations contained in the last sentence of paragraph 65.

7. Denies each and every allegation set forth in paragraph 66 of Capitol's counterclaim, except denies knowledge or information sufficient to form a belief as to the allegations contained in the first sentence thereof.

Additional Defendant Levy's Answer.

8. Denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph 67 of Capitol's counterclaim, except admits, on information and belief, that in or about February, 1975, Capitol released an album entitled, "John Lennon Rock 'n' Roll".

9. Denies each and every allegation of paragraph 68 of Capitol's counterclaim, except admits the first sentence thereof and further admits that the Roots album was produced from a tape delivered to plaintiffs by Lennon.

10. Denies each and every allegation set forth in paragraph 69 of Capitol's counterclaim, except admits that plaintiffs have used Lennon's name, likeness and musical performance in connection with the promotion and sale of the Roots album.

11. Denies each and every allegation set forth in paragraph 70 of Capitol's counterclaim, except admits that the Roots album jacket included advertising for other performers and other albums, and denies knowledge or information sufficient to form a belief as to whether Capitol and EMI Records Limited ("EMI") would sell Lennon albums with jackets including advertising for other performers and other albums.

12. Denies each and every allegation set forth in paragraphs 71, 72 and 73 of Capitol's counterclaim.

13. Levy for his answer to paragraph 74 of Capitol's counterclaim, repeats paragraphs 1-12 herein.

14. Denies each and every allegation set forth in paragraphs 75 and 76 of Capitol's counterclaim, except admits that plaintiffs manufactured and attempted to promote and sell the Roots album throughout the United States.

Defendant Levy's Answer.

15. Levy for his answer to paragraph 77 of Capitol's counterclaim, repeats paragraphs 1-12 herein.

16. Denies each and every allegation set forth in paragraphs 78 and 79 of Capitol's counterclaim, except admits that plaintiffs sought to use the tape for their commercial use and advantage.

17. Levy for his answer to paragraph 80 of Capitol's counterclaim, repeats paragraphs 1-12 herein.

18. Denies each and every allegation set forth in paragraphs 81, 82, 83 and 84 of Capitol's counterclaim.

19. Levy for his answer to paragraph 85 of Capitol's counterclaim, repeats paragraphs 1-12 herein.

20. Denies each and every allegation set forth in paragraphs 86 and 87 of Capitol's counterclaim, except admits the first sentence of paragraph 86 and denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of paragraph 87.

FIRST DEFENSE

21. Capitol's counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

22. All actions which Levy took or failed to take, and all statements which he made or failed to make, were in his capacity as an officer, employee and agent of plaintiffs, and not as an individual, and defendants at all times knew that they were dealing with plaintiffs and not Levy individually.

Defendant Levy's Answer.

THIRD DEFENSE

23. Capitol consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of Lennon's name, picture and likeness in connection therewith.

FOURTH DEFENSE

24. Capitol knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of Lennon's name, picture and likeness in connection therewith.

FIFTH DEFENSE

25. Capitol is guilty of laches.

SIXTH DEFENSE

26. Levy incorporates herein as a sixth defense the claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, Levy demands judgment dismissing Capitol's counterclaims, together with the costs and disbursements of this action.

Dated: New York, New York
October 28, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

By *William Schurman*
A Member of the Firm

Defendant Seider's Amended Answer to
Amended Complaint of Plaintiffs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

BIG SEVEN MUSIC CORP. and ADAM
VIII, LTD.,

Plaintiffs,

75 Civ. 1116
(LFM)

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS, INC.
and EMI RECORDS LIMITED,

Defendants,

MORRIS LEVY,

Additional Defendant
on Counterclaim.

AMENDED ANSWER TO
AMENDED COMPLAINT
OF HAROLD SEIDER

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The defendant Harold Seider (hereinafter "Seider"), by his attorneys Marshall, Bratter, Greene, Allison & Tucker, for his amended answer to the amended complaint of Big Seven Music Corp. (hereinafter "Big Seven") and Adam VIII, Ltd. (hereinafter "Adam VIII"), alleges as follows:

1. Seider denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations of the complaint, except insofar as said allegations are hereinafter admitted or denied.

2. Answering Paragraph 1, denies the allegations thereof, except admits that plaintiffs purport to bring this action under Section 4 of the Clayton Act, 15 U.S.C. §15, and further that plaintiffs purport to allege pendent jurisdiction over Counts II through VIII of the amended complaint.

Defendant Seider's Amended Answer.

3. Answering Paragraph 4, admits the allegations thereof.

4. Answering Paragraph 5, admits upon information and belief that Apple Records, Inc. (hereinafter "Apple") is a New York corporation.

5. Answering Paragraph 6, admits that Capitol Records, Inc. maintains an office for the conduct of business in the City, County and State of New York.

6. Answering Paragraph 7, admits that he is an attorney and acts as an advisor to John Lennon (hereinafter "Lennon") from time to time.

7. Answering Paragraphs 9 and 10, admits upon information and belief the allegations thereof.

8. Answering Paragraphs 11 and 12, denies upon information and belief the allegations thereof, except admits that the album "Walls and Bridges" released in September, 1974 did not include "You Can't Catch Me", that it included a song entitled "Ya Ya", and that it did not include another song owned by Big Seven; and alleges and avers upon information and belief that Lennon's attorneys advised the plaintiff, Big Seven, by letter dated December 31, 1974, of seven (7) master recordings available for licensing from Apple from which Big Seven could select three (3).

9. Answering Paragraph 13, denies upon information and belief the allegations thereof.

Defendant Seider's Amended Answer.

10. Answering Paragraph 14, denies so much of the allegations thereof as pertain to or are intended to refer to Seider.

11. Answering Paragraphs 15 and 16, denies upon information and belief the allegations thereof.

12. Answering Paragraph 18, admits upon information and belief that the attorneys for Lennon sent a letter to Big Seven advising it of seven (7) master recordings available for licensing from Apple from which Big Seven could select three (3) and that a copy of that letter appears to be Exhibit C to the amended complaint.

13. Answering Paragraph 19, admits upon information and belief that the attorneys for Lennon received a response to their letter from Morris Levy as President of Big Seven, that a copy of that response appears to be Exhibit D to the amended complaint and that part of said response is quoted in said paragraph.

14. Answering Paragraphs 20 and 21, denies the allegations thereof.

15. Answering Paragraph 27, admits upon information and belief the allegations thereof.

16. Answering Paragraph 28, admits the allegations thereof.

17. Answering Paragraph 30, denies upon information and belief the allegations thereof.

Defendant Seider's Amended Answer.

18. Answering Paragraph 33, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

19. Answering Paragraphs 34 through 37, denies the allegations thereof.

20. Answering Paragraph 41, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

21. Answering Paragraphs 42 through 45, denies so much of the allegations thereof as pertain to or are intended to refer to Seider.

22. Answering Paragraph 46, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

23. Answering Paragraphs 47 through 49, denies so much of the allegations thereof as pertain to or are intended to refer to Seider.

24. Answering Paragraph 50, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

25. Answering Paragraph 51, denies the allegations thereof.

Defendant Seider's Amended Answer.

26. Answering Paragraph 52, denies the allegations of the first sentence thereof.

27. Answering Paragraphs 53 and 54, denies the allegations thereof.

28. Answering Paragraph 55, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

29. Answering Paragraphs 56 and 57, denies the allegations thereof.

30. Answering Paragraph 58, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

31. Answering Paragraphs 59, 60, 61 and 63, denies the allegations thereof.

32. Answering Paragraph 62, denies the allegations of the first sentence thereof.

33. Answering Paragraph 64, repeats and realleges each and every allegation of Paragraphs 1 through 17 hereof with the same force and effect as if the same were fully set forth herein.

34. Answering Paragraphs 65 and 67, denies the allegations thereof.

Defendant Seider's Amended Answer.

35. Answering Paragraph 66, denies the allegations of the first sentence thereof.

36. Seider denies that plaintiffs are entitled to the relief sought in their amended complaint, or to any of such relief or to any other relief against Seider.

FIRST DEFENSE

37. The amended complaint fails to state a claim against Harold Seider upon which relief can be granted.

SECOND DEFENSE

38. The alleged "October 1974 agreement" is void and unenforceable by reason of the applicable Statute of Frauds.

THIRD DEFENSE

39. Big Seven assigned its rights under the alleged "October 1974 agreement" to Adam VIII and Big Seven, therefore, lacks standing to bring this action.

FOURTH DEFENSE

40. The alleged "October 1974 agreement" is unenforceable by reason of its lack of specificity and definiteness.

FIFTH DEFENSE

41. The alleged "October 1974 agreement" is void and

Defendant Seider's Amended Answer.

unenforceable because it lacks consideration.

SIXTH DEFENSE

42. The Court lacks pendent jurisdiction over Counts II-VIII because Count I is insubstantial.

WHEREFORE, Harold Seider demands judgment dismissing the amended complaint together with the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 30, 1975

MARSHALL, BRATTER, GREENE
ALLISON & TUCKER

By 

A Member of the Firm
Attorneys for Defendant
Harold Seider
430 Park Avenue
New York, New York 10022
Tel. No. (212) 421-7200

Defendant Lennon's Amended Answer to Plaintiffs'
Amended Complaint & Counterclaim.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and ADAM
VIII, LTD.,

Plaintiffs,

75 Civ. 1116
(LFM)

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS, INC
and EMI RECORDS LIMITED,

Defendants,

AMENDED ANSWER TO
AMENDED COMPLAINT
AND COUNTERCLAIM
OF JOHN LENNON

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.

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The defendant John Lennon (hereinafter "Lennon"), by his attorneys Marshall, Bratter, Greene, Allison & Tucker, for his amended answer to the amended complaint of Big Seven Music Corp. (hereinafter "Big Seven") and Adam VIII, Ltd. (hereinafter "Adam VIII"), and for his counterclaim, alleges as follows:

1. Lennon denies that he has knowledge or information sufficient to form a belief as to the truth of the allegations of the amended complaint, except insofar as said allegations are hereinafter expressly admitted or denied.

2. Answering Paragraph 1, denies the allegations thereof, except admits that plaintiffs purport to bring this action under Section 4 of the Clayton Act, 15 U.S.C. §15, and further that plaintiffs purport to allege pendent jurisdiction over Counts II through VIII of the amended complaint.

Defendant Lennon's Amended Answer.

3. Answering Paragraphs 4 and 5, admits the allegations thereof, except denies that Apple Records, Inc. is actively engaged in interstate or foreign commerce or that its principal place of doing business is located in the City, County and State of New York.

4. Answering Paragraph 6, admits that Capitol Records, Inc. ("Capitol") maintains an office for the conduct of business in the City, County and State of New York.

5. Answering Paragraph 7, admits that Harold Seider is an attorney who acts as an advisor to Lennon from time to time.

6. Answering Paragraphs 9 and 10, admits the allegations thereof.

7. Answering Paragraphs 11 and 12, denies so much of the allegations thereof as pertain to or are intended to refer to Lennon, except admits that the album "Walls and Bridges" released in September, 1974 did not include "You Can't Catch Me", that it included a song entitled "Ya Ya", and that it did not include any other Big Seven song; and alleges and avers that Lennon's attorneys advised the plaintiff, Big Seven, by letter dated December 31, 1974, of seven (7) master recordings available for licensing from Apple Records, Inc. from which Big Seven could select three (3).

8. Answering Paragraphs 13, 14, 15 and 16, denies so much of the allegations thereof as pertain to or are intended to refer to Lennon.

Defendant Lennon's Amended Answer.

9. Answering Paragraph 18, admits that the attorneys for Lennon sent a letter to Big Seven advising it of seven (7) master recordings available for licensing from Apple Records, Inc. from which Big Seven could select three (3) and that a copy of that letter appears to be Exhibit C to the amended complaint.

10. Answering Paragraph 19, admits that the attorneys for Lennon received a response to their letter from Morris Levy as President of Big Seven, that a copy of that response appears to be Exhibit D to the amended complaint and that part of said response is quoted in said paragraph.

11. Answering Paragraph 20, upon information and belief denies the allegations thereof.

12. Answering Paragraph 27, admits the allegations thereof.

13. Answering Paragraph 28, admits upon information and belief the allegations thereof.

14. Answering Paragraph 30, denies the allegations thereof.

15. Answering Paragraph 32, denies so much of the allegations thereof as pertain to or are intended to refer to Lennon.

16. Answering Paragraph 33, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

Defendant Lennon's Amended Answer.

17. Answering Paragraphs 34 through 37, denies the allegations thereof.

18. Answering Paragraph 38, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

19. Answering Paragraphs 39 and 40, denies the allegations thereof.

20. Answering Paragraph 50, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

21. Answering Paragraph 51, denies the allegations thereof.

22. Answering Paragraph 52, denies the allegations of the first sentence thereof.

23. Answering Paragraphs 53 and 54, denies the allegations thereof.

24. Answering Paragraph 55, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

25. Answering Paragraphs 56 and 57, denies the allegations thereof.

Defendant Lennon's Amended Answer.

26. Answering Paragraph 58, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

27. Answering Paragraphs 59, 60, 61 and 63, denies the allegations thereof.

28. Answering Paragraph 62, denies the allegations of the first sentence thereof.

29. Answering Paragraph 64, repeats and realleges each and every allegation of Paragraphs 1 through 15 hereof with the same force and effect as if the same were fully set forth herein.

30. Answering Paragraphs 65 and 67, denies the allegations thereof.

31. Answering Paragraph 66, denies the allegations of the first sentence thereof.

32. Lennon denies that plaintiffs are entitled to the relief sought in their amended complaint, or to any of such relief or to any other relief against Lennon.

FIRST DEFENSE

33. The amended complaint fails to state a claim against Lennon upon which relief can be granted.

Defendant Lennon's Amended Answer.

SECOND DEFENSE

34. The alleged "October 1974 agreement" is void and unenforceable by reason of the applicable Statute of Frauds.

THIRD DEFENSE

35. Big Seven assigned its rights under the alleged "October 1974 agreement" to Adam VIII and Big Seven, therefore, lacks standing to bring this action.

FOURTH DEFENSE

36. The alleged "October 1974 agreement" is unenforceable by reason of its lack of specificity and definiteness.

FIFTH DEFENSE

37. The alleged "October 1974 agreement" is void and unenforceable because it lacks consideration.

SIXTH DEFENSE

38. The Court lacks pendent jurisdiction over Counts II-VII because Count I is insubstantial.

FIRST COUNTERCLAIM AGAINST BIG SEVEN
MUSIC CORP. AND ADAM VIII, LTD.

39. This is a claim seeking compensatory and punitive damages and an injunction pursuant to Sections 50 and 51 of the New

Defendant Lennon's Amended Answer.

York Civil Rights Law and the common law of the State of New York against Big Seven and Adam VIII. Jurisdiction is asserted pursuant to the doctrine of pendent jurisdiction.

40. Lennon is a resident of the State of New York, and is and has been for over ten (10) years, a highly successful and popular musician, composer, singer and performer, who was formerly a member of the internationally famous English rock music group known as "The Beatles". For the past several years Lennon has been performing under his own name.

41. Big Seven is, according to the allegations of Paragraph 2 of the amended complaint, a corporation organized and existing under the laws of the State of New York with its principal place of business in the City, County and State of New York.

42. Adam VIII is, according to the allegations of Paragraph 3 of the amended complaint, a corporation organized and existing under the laws of the State of New York with its principal place of business in the City, County and State of New York.

43. Upon information and belief, since at least October 1973, Morris Levy (hereinafter "Levy") has been the President of Big Seven and Adam VIII. Upon information and belief, Levy maintains an office for the transaction of business in the City, County and State of New York.

44. In or about November, 1974, Big Seven and Adam VIII obtained through Levy who in turn received it from Lennon a seven and one-half (7-1/2) inch half track EQ tape of certain musical

Defendant Lennon's Amended Answer.

performances by Lennon (hereinafter the "Tape"), which was made from other tapes then being processed by Lennon into "Masters" from which eight-track tapes and/or phonograph records could later be produced. Levy asked Lennon for the Tape for the purpose of listening to it. At no time did Lennon authorize Levy, Big Seven or Adam VIII to use the Tape for the purpose of producing or manufacturing therefrom eight-track tapes and/or phonograph records of Lennon's performances or distributing or selling same, or for any other commercial purpose.

45. In or about early February 1975, and on various occasions subsequent thereto, the plaintiffs Big Seven and Adam VIII, in their business and for advertising purposes and for purposes of trade did unlawfully and without the written or oral consent of Lennon use a picture and likeness of Lennon together with his name in connection with the advertisement and sale of eight-track tapes and/or phonograph records of Lennon's performances without compensation to Lennon therefor and did advertise said eight-track tapes and/or phonograph records under the title "John Lennon Sings the Great Rock & Roll Hits-Roots" (hereinafter the "Roots Album").

46. Upon information and belief, the Roots Album is a copy of the Tape or was produced from the Tape. The Roots Album, its record jacket and the merchandising thereof are of inferior quality and not commensurate with the standards that the public has come to associate with Lennon. The record jacket of the Roots Album has a picture and likeness of Lennon on its cover and Lennon's name appears on said record jacket no less than nineteen times.

Defendant Lennon's Amended Answer.

47. Upon information and belief, Big Seven and Adam VIII caused advertisements offering the Roots Album for sale to the general public, using a picture and likeness of Lennon together with his name in connection therewith, to be carried on television stations in New York City, which advertisements were viewed by the general public in the New York metropolitan area, including New Jersey and Connecticut. Upon information and belief, Big Seven and Adam VIII caused similar advertisements to appear on television stations in various other cities throughout the United States.

48. Upon information and belief, Big Seven and Adam VIII since in or about early February, 1975, have been selling the Roots Album containing Lennon's performances, without compensation to Lennon therefor, to the general public in response to orders received as a result of the advertising referred to in Paragraph 45 above.

49. The use by Big Seven and Adam VIII of Lennon's name, picture and likeness, and the sale of the Roots Album as aforesaid, all without compensation to Lennon therefor, was and is entirely unauthorized and without Lennon's written or oral consent and such use and sale by the plaintiffs was and is knowingly unlawful and in violation of Sections 50 and 51 of the Civil Rights Law of the State of New York.

50. Big Seven and Adam VIII assert the right to use Lennon's name, picture and likeness in connection with the advertisement and sale of the Roots Album and to sell the Roots Album, and threaten to continue to use the same in such connection and to

Defendant Lennon's Amended Answer.

sell said album, notwithstanding that Lennon has duly demanded that Big Seven and Adam VIII cease such use and sale.

51. By reason of the foregoing and the knowing, wilful and unlawful use of Lennon's name, picture and likeness and performances Lennon has been and continues to be irreparably damaged in his person and business and otherwise, has been damaged in at least the sum of Fifty Thousand (\$50,000) Dollars, the exact amount to be determined at trial, and is entitled to an award of punitive damages as against Big Seven and Adam VIII of Two Hundred Thousand (\$200,000) Dollars and to injunctive relief, all in accordance with Section 51 of the Civil Rights Law of the State of New York.

SECOND COUNTERCLAIM AGAINST BIG SEVEN
MUSIC CORP., ADAM VIII, LTD. AND MORRIS LEVY

52. This is a claim seeking an accounting and an injunction pursuant to the common law of the State of New York against Big Seven, Adam VIII and Levy, who is joined as a defendant pursuant to Rule 13 of the Federal Rules of Civil Procedure. Jurisdiction is asserted pursuant to the doctrines of pendent jurisdiction and ancillary jurisdiction.

53. Lennon repeats and realleges each and every allegation of Paragraphs 40 through 48 hereof with the same force and effect as if the same were fully set forth herein.

54. The plaintiffs Big Seven and Adam VIII and the counterclaim defendant Levy (hereinafter the "Counterclaim Defendants")

Defendant Lennon's Amended Answer.

wrongfully, wilfully, and fraudulently appropriated to themselves the reputation, good will, and high standing of Lennon, thereby intending to injure Lennon irreparably, and divert to themselves the benefit and advantage which would otherwise have accrued to Lennon from the excellence of and wide public acceptance for his performances and the sole right and property of Lennon in his said name and performances, to be used in the manufacture, sale and distribution of eight-track tapes and/or phonograph records only upon terms satisfactory to Lennon and under conditions that will insure the maintenance of Lennon's reputation and wide acceptance by the public.

55. Without the consent of Lennon, the Counterclaim Defendants have wrongfully, wilfully, and fraudulently sold and offered for sale the Roots Album, and threaten to continue to sell and offer for sale said album, and have advertised and threaten to advertise said sales, as hereinbefore alleged, using Lennon's name, picture and likeness and performances without his permission and without compensation to him, not only in the State of New York but throughout the United States. By reason of said acts of the Counterclaim Defendants the public has been misled as to the origin of the Roots Album, and Lennon's reputation, good will and popularity have been and are being irreparably damaged; and the Counterclaim Defendants threaten to and will continue to so act to Lennon's irreparable damage unless restrained and enjoined by this Court.

56. Lennon has no adequate remedy at law for all of the wrongs hereinbefore alleged, except that for the wrongs complained

Defendant Lennon's Amended Answer.

of in the First Counterclaim, besides injunctive relief, Lennon is entitled to an assessment of compensatory and punitive damages pursuant to Section 51 of the Civil Rights Law of the State of New York.

WHEREFORE, John Lennor. demands judgment as follows:

1. Dismissing the amended complaint together with the costs and disbursements of this action.
2. On the First and Second Counterclaims, that Big Seven Music Corp., Adam VIII, Ltd. and Morris Levy, and each of them, their agents, servants, officers, employees, representatives, assignees, attorneys, and those persons in active concert or participation with and each of them, be forever restrained and enjoined from manufacturing, producing, selling or offering for sale, or causing to be manufactured, produced, sold or offered for sale eight-track tapes and/or phonograph records bearing the name, picture or likeness of John Lennon, or containing the musical performances of John Lennon, and in particular the eight-track tapes and/or phonograph records entitled "John Lennon Sings The Great Rock & Roll Hits-Roots", the same being the sole and exclusive property and right of John Lennon, and that Big Seven Music Corp., Adam VIII, Ltd. and Morris Levy be restrained and enjoined to like effect during the pendency of this action.
3. On the First Counterclaim, compensatory damages in an amount in excess of Fifty Thousand (\$50,000) Dollars, the exact amount to be determined at trial and punitive damages in the amount of Two Hundred Thousand (\$200,000) Dollars

Defendant Lennon's Amended Answer.

4. On the Second Counterclaim, for an accounting of the profits realized by the sale of the eight-track tapes and/or phonograph records entitled "John Lennon Sings The Great Rock & Roll Hits-Roots" since early February, 1975.

5. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 30, 1975

MARSHALL, BRATTER, GREENE,
ALLISON & TUCKER

By 

A Member of the Firm
Attorneys for Defendant and
Counterclaim Plaintiff John Lennon
430 Park Avenue
New York, New York
Tel. No. (212) 421-7200

Additional Defendant Levy's Reply to Counterclaims
of Defendant Apple.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.

ANSWER TO COUNTERCLAIM
OF APPLE RECORDS, INC.

75 Civ. 1116 (LFM)

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
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M.H. 175

-----x
Additional defendant on counterclaim, Morris Levy
("Levy"), by his attorneys, Walter, Conston, Schurtman & Gumpel,
P.C., for his reply to the counterclaim of defendant, Apple
Records, Inc. ("Apple"), alleges as follows:

1. Admits, on information and belief, each and every
allegation of paragraph 62 of Apple's counterclaim.
2. Admits each and every allegation of paragraphs 63
and 64 of Apple's counterclaim.
3. Denies each and every allegation of paragraph 65 of
Apple's counterclaim, except admits that since at least October
1973, Levy has been the President of Big Seven and Adam VIII.

Additional Defendant Levy's Reply.

4. Denies each and every allegation of paragraph 66 of Apple's counterclaim, except admits that Apple purports to state its counterclaim pursuant to Rule 13 of the Federal Rules of Civil Procedure, and to assert that jurisdiction arises under the doctrine of pendent and ancillary jurisdiction.

5. Denies each and every allegation of paragraph 67 and 68 of Apple's counterclaim.

FIRST DEFENSE

6. Apple's counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

7. All statements which Levy made or failed to make were in his capacity as an officer, employee and agent of plaintiffs and not as an individual and John Lennon ("Lennon") and Apple at all times knew that they were dealing with plaintiffs and not Levy individually.

THIRD DEFENSE

8. Any statements which Levy made to defendant Lennon as an individual or as an officer of Apple were reasonably believed to be true and were not made for the purpose of defrauding Lennon or Apple. Levy further did not knowingly fail to make any statements necessary to make his statements not misleading.

FOURTH DEFENSE

9. Lennon and Apple consented to the recording, production, distribution, sale and advertisement of the Roots album and the use of Lennon's name, picture and likeness in connection therewith.

Additional Defendant Levy's Reply.

FIFTH DEFENSE

10. Lennon and Apple knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album and to the use of Lennon's name, picture and likeness in connection therewith.

SIXTH DEFENSE

11. Apple is guilty of laches.

SEVENTH DEFENSE

12. Lennon, individually and on behalf of Apple, in order to induce plaintiffs to forebear from prosecuting a claim against Lennon and Apple for breach of a settlement agreement in an action entitled, Big Seven Music Corp. v. MacLen Music, Inc., et al., 70 Civ. 1348 (S.D.N.Y.), and with Apple's knowledge and consent, promised to record approximately 15 rock and roll songs for plaintiffs and to permit plaintiffs to produce, distribute, advertise and sell a phonograph album embodying his recorded performances.

13. Plaintiffs reasonably relied on the aforesaid promise and thereafter expended substantial time and effort and incurred substantial expense in producing, distributing and advertising the said phonograph album.

14. Apple expected or should reasonably have expected plaintiffs to rely to their detriment on Lennon's and Apple's promise and is therefore estopped from disaffirming said promise or from claiming damages by reason thereof.

Additional Defendant Levy's Reply.

EIGHTH DEFENSE

15. Levy incorporates herein as an Eighth Defense the claims for relief set forth in plaintiffs' amended complaint herein.

WHEREFORE, Levy demands judgment dismissing Apple's counterclaim, together with the costs and disbursements of this action.

Dated: New York, New York
October 31, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.

By: Alvin Kagan

A Member of the Firm
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

Plaintiffs' Reply to Counterclaim of Defendant Apple.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants.

REPLY TO COUNTERCLAIM
OF APPLE RECORDS, INC.

75 Civ. 1116 (LFM)

Plaintiffs Big Seven Music Corp. ("Big Seven") and Adam VIII, Ltd. ("Adam VIII"), by their attorneys, Walter Schurtman & Gumpel, P.C., for their reply to the counterclaim of defendant Apple Records, Inc. ("Apple"), allege as follows:

1. Admit, on information and belief, each and every allegation of paragraph 62 of Apple's counterclaim.
2. Admit each and every allegation of paragraphs 63 and 64 of Apple's counterclaim.
3. Deny each and every allegation of paragraph 65 of Apple's counterclaim, except admit that since at least October, 1973, Morris Levy ("Levy") has been the President of Big Seven and Adam VIII.
4. Deny each and every allegation of paragraph 66 of Apple's counterclaim, except admit that Apple purports to state its counterclaim pursuant to Rule 13 of the Federal Rules of Civil Procedure, and to assert that jurisdiction arises under the doctrine of pendent and ancillary jurisdiction.

FILED
U.S. DISTRICT COURT
S.D.N.Y.
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Plaintiffs' Reply.

5. Deny each and every allegation of paragraphs 67 and 68 of Apple's counterclaim.

FIRST DEFENSE

6. Apple's counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE

7. Any statements which Levy made to defendant John Lennon ("Lennon") as an individual or as an officer of Apple were reasonably believed to be true and were not made for the purpose of defrauding Lennon or Apple. Levy further did not knowingly fail to make any statements necessary to make his statements not misleading.

THIRD DEFENSE

8. Lennon and Apple consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of Lennon's name, picture and likeness in connection therewith.

FOURTH DEFENSE

9. Lennon and Apple knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of Lennon's name, picture and likeness in connection therewith.

FIFTH DEFENSE

10. Apple is guilty of laches.

Plaintiffs' Reply.

SIXTH DEFENSE

11. Lennon, individually and on behalf of Apple, in order to induce plaintiffs to forebear from prosecuting a claim against Lennon and Apple for breach of a settlement agreement in an action entitled, Big Seven Music Corp. v. Maclen Music, Inc., et al., 70 Civ. 1348 (S.D.N.Y.), and with Apple's knowledge and consent, promised to record approximately 15 rock and roll songs for plaintiffs and to permit plaintiffs to produce, distribute, advertise and sell a phonograph album embodying his recorded performances.

12. Plaintiffs reasonably relied on the aforesaid promise and thereafter expended substantial time and effort and incurred substantial expense in producing, distributing and advertising the said phonograph album.

13. Apple expected or should reasonably have expected plaintiffs to rely to their detriment on Lennon's and Apple's promise and is therefore estopped from disaffirming said promise or from claiming damages by reason thereof.

SEVENTH DEFENSE

14. Plaintiffs incorporate herein as a Seventh Defense the claims for relief set forth in plaintiffs' amended complaint herein.

Plaintiffs' Reply.

WHEREFORE, plaintiffs demand judgment dismissing Apple's counterclaim and awarding plaintiffs the relief sought in plaintiffs' amended complaint herein.

Dated: New York, New York
October 31, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.

By: Ala. K...

A Member of the Firm
Attorneys for Plaintiffs
330 Madison Avenue
New York, New York 10017
(212) 682-2323

Defendant on Counterclaim Levy's Answer to
Counterclaims of Defendant Lennon.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants,

- and -

MORRIS LEVY,

Additional Defendant
on Counterclaim.

ANSWER TO COUNTERCLAIMS
OF JOHN LENNON

75 Civ. 1116 (LPM)

FILED
U.S. DISTRICT COURT
Nov 7 11 44 AM '75
S.D. OF N.Y.

Additional defendant on the counterclaim Morris Levy
("Levy"), by his attorneys, Walter, Conston, Schurtman & Gumpel,
P.C., for his answer to the counterclaims of defendant John Lennon
("Lennon"), alleges as follows:

1. Admits that Lennon purports, in paragraph 39 of his
counterclaim, to base his counterclaim on Sections 50 and 51 of
the New York Civil Rights Law and the common law of the State of
New York and to assert jurisdiction pursuant to the doctrine of
pendent jurisdiction.

2. Admits each and every allegation set forth in para-
graphs 40, 41, 42 and 43 of Lennon's counterclaim, except denies
that Levy maintains an office for the transaction of business in
the City, County and State of New York.

Answer to Counterclaims of John Lennon.

3. Denies each and every allegation of paragraph 44 of the counterclaim except admits that plaintiffs, in or about November, 1974, received from Lennon a seven and one-half inch track track EQ tape of certain musical performances by Lennon.

4. Denies each and every allegation of paragraph 45 of the counterclaim except admits that in or about early February, 1975, plaintiffs used a picture of Lennon together with his name in connection with the advertisement and sale of an album of performances by Lennon entitled, "Roots".

5. Denies each and every allegation of paragraph 46 of the counterclaim except admits that the Roots album was produced from a tape delivered to plaintiffs by Lennon, and that Lennon's picture and name are on the record jacket.

6. Denies each and every allegation of paragraph 47 of the counterclaim except admits that plaintiffs advertised the Roots album for sale to the general public by causing advertisements, which included Lennon's name and picture, to be broadcast by certain television stations in New York City and certain other cities in the United States.

7. Denies each and every allegation contained in paragraph 48 of the counterclaim except admits that members of the general public have placed orders for and were sold copies of the roots album, which contains performances by Lennon.

8. Denies each and every allegation of paragraph 49 of the counterclaim.

Answer to Counterclaims of John Lennon.

9. Denies each and every allegation of paragraph 50 of the counterclaim except admits that plaintiffs assert the right to sell the Roots album and to use Lennon's name, picture and likeness in connection with its advertisement and sale. Levy also admits that Lennon has demanded that plaintiffs cease such use and sale.

10. Denies each and every allegation of paragraph 51 of the counterclaim.

11. Admits that Lennon purports, in paragraph 52 of his counterclaim, to base his counterclaim on the common law of the State of New York and assert jurisdiction pursuant to the doctrine of pendent jurisdiction.

12. In answer to paragraph 53 of the counterclaim, Levy repeats each and every admission and denial contained in paragraphs 2 through 8 of this answer.

13. Denies each and every allegation contained in paragraphs 54, 55 and 56 of the counterclaim.

FIRST DEFENSE

14. The counterclaims fail to state a claim upon which relief can be granted.

SECOND DEFENSE

15. All actions which Levy took or failed to take, and all statements which he made or failed to make were in his capacity as an officer, employee and agent of plaintiffs and not as an individual, and Lennon at all times knew that he was dealing with plaintiffs and not Levy individually.

Answer to Counterclaims of John Lennon.

THIRD DEFENSE

16. Lennon consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of his name, picture and likeness in connection therewith.

FOURTH DEFENSE

17. Lennon knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of his name, picture and likeness in connection therewith.

FIFTH DEFENSE

18. Lennon is guilty of laches.

SIXTH DEFENSE

19. Lennon, in order to induce plaintiffs to forebear from prosecuting a claim against him for breach of a settlement agreement in an action entitled, Big Seven Music Corp. v. Maclean Music, Inc., et al., 70 Civ. 1348 (S.D.N.Y.), promised to record approximately 15 rock and roll songs for plaintiffs and to permit plaintiffs to produce, distribute, advertise and sell a phonograph album embodying his recorded performances.

20. Plaintiffs reasonably relied on the aforesaid promise, and thereafter expended substantial time and effort and incurred substantial expense in producing, distributing and advertising the said phonograph album.

Answer to Counterclaims John Lennon.

21. Lennon expected or should reasonably have expected plaintiffs to rely to their detriment on his promise and is therefore estopped from disaffirming his said promise or from claiming damages by reason thereof.

SEVENTH DEFENSE

22. Levy incorporates herein as a seventh defense the claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, Levy demands judgment dismissing Lennon's counterclaims, together with the costs and disbursements of this action.

Dated: New York, New York
November 4, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.

By: Alvin J. Levy
A Member of the Firm
Attorneys for Plaintiffs and Levy
330 Madison Avenue
New York, New York 10017
(212) 682-2323

Plaintiffs' Reply to Counterclaims of
Defendant Lennon.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants.

REPLY TO COUNTERCLAIMS
OF JOHN LENNON

75 Civ. 1116 (LFM)

FILED
U.S. DISTRICT COURT
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S.D. OF N.Y.

Plaintiffs Big Seven Music Corp. ("Big Seven") and Adam VIII, Ltd. ("Adam VIII"), by their attorneys, Walter, Conston, Schurtman & Gumpel, P.C., for their reply to the counterclaims of defendant John Lennon ("Lennon"), allege as follows:

1. Admit that Lennon purports, in paragraph 39 of his counterclaim, to base his counterclaim on Sections 50 and 51 of the New York Civil Rights Law and the common law of the State of New York and to assert jurisdiction pursuant to the doctrine of pendent jurisdiction.

2. Admit each and every allegation set forth in paragraphs 40, 41, 42 and 43 of Lennon's counterclaim, except deny that Levy maintains an office for the transaction of business in the City, County and State of New York.

Plaintiffs' Reply.

3. Plaintiffs deny each and every allegation of paragraph 44 of the counterclaim except admit that plaintiffs, in or about November, 1974, received from Lennon a seven and one-half inch half track EQ tape of certain musical performances by Lennon.

4. Plaintiffs deny each and every allegation of paragraph 45 of the counterclaim except admit that in or about early February, 1975, plaintiffs used a picture of Lennon together with his name in connection with the advertisement and sale of an album of performances by Lennon entitled "Roots".

5. Plaintiffs deny each and every allegation of paragraph 46 of the counterclaim except admit that the Roots album was produced from a tape delivered to plaintiffs by Lennon, and that Lennon's picture and name are on the record jacket.

6. Plaintiffs deny each and every allegation of paragraph 47 of the counterclaim except admit that plaintiffs advertised the Roots album for sale to the general public by causing advertisements, which included Lennon's name and picture, to be broadcast by certain television stations in New York City and certain other cities in the United States.

7. Plaintiffs deny each and every allegation of paragraph 48 of the counterclaim except admit that members of the general public have placed orders for and were sold copies of the Roots album, which contains performances by Lennon.

8. Plaintiffs deny each and every allegation of paragraph 49 of the counterclaim.

Plaintiffs' Reply.

9. Plaintiffs deny each and every allegation of paragraph 50 of the counterclaim except admit that plaintiffs assert the right to sell the Roots album and to use Lennon's name, picture and likeness in connection with its advertisement and sale. Plaintiffs also admit that Lennon has demanded that plaintiffs cease such use and sale.

10. Plaintiffs deny each and every allegation of paragraph 51 of the counterclaim.

11. Plaintiffs admit that Lennon purports, in paragraph 52 of his counterclaim, to base his counterclaim on the common law of the State of New York and assert jurisdiction pursuant to the doctrine of pendent jurisdiction.

12. In reply to paragraph 53 of the counterclaim, plaintiffs repeat each and every admission and denial contained in paragraphs 2 through 8 of this reply.

13. Plaintiffs deny each and every allegation contained in paragraphs 54, 55 and 56 of the counterclaim.

FIRST DEFENSE

14. The counterclaims fail to state a claim upon which relief can be granted.

SECOND DEFENSE

15. Lennon consented to the recording, production, distribution, sale and advertisement of the Roots album, and the use of his name, picture and likeness in connection therewith.

Plaintiffs' Reply.

THIRD DEFENSE

16. Lennon knew of and acquiesced in the recording, production, distribution, sale and advertisement of the Roots album, and to the use of his name, picture and likeness in connection therewith.

FOURTH DEFENSE

17. Lennon is guilty of laches.

FIFTH DEFENSE

18. Lennon, in order to induce plaintiffs to forebear from prosecuting a claim against him for breach of a settlement agreement in an action entitled, Big Seven Music Corp. v. MacIen Music, Inc., et al., 70 Civ. 1348 (S.D.N.Y.), promised to record approximately 15 rock and roll songs for plaintiffs and to permit

Plaintiffs' Reply.

plaintiffs to produce, distribute, advertise and sell a phonograph album embodying his recorded performances.

19. Plaintiffs reasonably relied on the aforesaid promise, and thereafter expended substantial time and effort and incurred substantial expense in producing, distributing and advertising the said phonograph album.

20. Lennon expected or should reasonably have expected plaintiffs to rely to their detriment on his promise and is therefore estopped from disaffirming his said promise or from claiming damages by reason thereof.

SIXTH DEFENSE

21. Plaintiffs incorporate herein as a sixth defense the claims for relief set forth in plaintiffs' amended complaint in this action.

WHEREFORE, plaintiffs demand judgment dismissing Lennon's counterclaim and awarding plaintiffs the relief sought in plaintiffs' amended complaint herein.

Dated: New York, New York
November 4, 1975

WALTER, CONSTON, SCHURTMAN &
GUMPEL, P.C.

By: Alvin J. Jones
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Opinion #43919.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,
:
Plaintiffs,
:
v.
:
JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC., and EMI RECORDS, LIMITED,
:
Defendants,
:
and
:
MORRIS LEVY,
:
Additional
Defendant on
Counterclaim.
:
-----X

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75 Civ. 1116 TPG

OPINION

FILED
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GRIESA, J.

This is an action alleging that defendants wrongfully prevented plaintiffs from distributing a record album. The action is brought under the anti-trust laws and common law theories. The latter theories are maintainable in the federal court under the doctrine of pendent jurisdiction.

Plaintiff Big Seven Music Corp. is engaged in music publishing and is the owner of song copyrights. Plaintiff Adam VIII, Ltd. is in the business of marketing phonograph records and tapes. Both of these companies are owned by one Morris Levy.

Defendant John Lennon is a singer, musician and composer and also a member of the former English rock music group known as "the Beatles." Defendant Apple Records, Inc. is a New York corporation, indirectly owned by all four of the Beatles -- Lennon, Paul McCartney, George Harrison and Richard Starkey (known as Ringo Starr). At the relevant times

Lennon was president of Apple. Defendant Harold Seider is an attorney and Lennon's business advisor. Defendant EMI Records, Limited is an English corporation in the record business. Defendant Capitol Records, Inc. is a subsidiary of EMI and is in the record business in the United States. Lennon and Apple have contractual arrangements with EMI and Capitol for the distribution of records by the Beatles and the four individuals.

I.

Morris Levy, through his company Adam VIII, specializes in distributing phonograph records through television advertising. The records are usually compilations of song hits from earlier years, previously issued by other companies. Levy selects a group of songs, acquires the licenses and "master tapes" from the various companies and reproduces the songs on his records. Levy advertises the records on

television, for mail order sales and for sales through so-called "retail fulfillment centers." Retail fulfillment centers are outlets such as Woolworth's and Montgomery Ward.

Levy distributes records not only in the United States, but also in foreign countries through certain license arrangements.

The present case arises from the claim by plaintiffs that Levy entered into an oral contract on October 8, 1974 with Lennon and Apple, under which Levy was granted the right to distribute through television advertising a record album of rock and roll songs recorded by Lennon. Plaintiffs' claim as originally pleaded was that this contract was for Levy to distribute the album on a worldwide basis, through both mail order and retail distribution sales. During the trial plaintiffs amended their claim, and now assert that the contract was limited to mail order sales in the United States. Although the case involves a number of claims and counterclaims on various theories, the basic issue is whether or not such a contract was made.

A separate trial, by the Court without a jury, has been held on this issue of the existence of the contract. This opinion constitutes the Court's findings of fact and conclusions of law on the issues which have been tried.

I hold that plaintiffs have not proved the making of the alleged contract.

II.

The background of the present case lies in an earlier lawsuit brought by one of the plaintiffs in the present action, entitled Big Seven Music Corp. v. MacLen Music, Inc., Northern Songs, Ltd. and Apple Records, Inc. (S.D.N.Y. 70 Civ. 1348). The essence of this suit was that a song written by John Lennon entitled "Come Together" infringed Big Seven's copyright in a song entitled "You Can't Catch Me," written by a rock and roll singer named Chuck Berry.

This action was settled on October 12, 1973. Under the settlement Lennon agreed, among other things, to record three songs belonging to Big Seven in his next album.

At the time of the October 1973 settlement agreement, Lennon was in Los Angeles, involved in recording sessions for an album of rock and roll hits of the 1950's. It was contemplated that the rock and roll album would contain the three Big Seven songs required by the October 1973 settlement. Lennon was working with one Phil Spector, a successful producer of rock and roll records. At some point these recording sessions terminated because of difficulties created by Spector. The tapes of those songs which had been recorded were appropriated by Spector. The result was that Lennon could make no further progress towards the completion of his rock and roll album.

It was not until July 1974 that Lennon retrieved the Spector tapes. In order to obtain these tapes, Capitol paid Spector about \$90,000.

By this time Lennon was working on another album entitled "Walls and Bridges." He did not resume work on the rock and roll album. He wished to complete "Walls and Bridges" first.

The "Walls and Bridges" album was released in September 1974. It was the next album released by Lennon following the October 1973 settlement, but it did not contain the three songs belonging to Big Seven, which the "next album" was required to contain under the settlement agreement.

When Levy learned about this, he considered it a breach of the settlement agreement. Levy discussed the matter with Lennon's representative, Seider, and requested a meeting with Lennon. Such a meeting was held on the evening of October 8, 1974 at the Club Cavallero on East 58th Street in New York City. This is the occasion when plaintiffs claim the alleged oral contract, forming the basis of the present action, was made.

III.

Before discussing the evidence regarding the Club Cavallero meeting, it should be observed that Capitol was the regular distributor in North America,

and EMI was the regular distributor elsewhere, for records made by the Beatles and individual members of the group. However, plaintiffs claim that, by virtue of certain contracts entered into in 1969, Apple possessed the rights to distribute Lennon's records by mail order in North America. Plaintiffs further claim that this circumstance was understood by both Levy and Lennon at the October 8, 1974 meeting, and was the basis for an agreement under which Levy would distribute Lennon's forthcoming rock and roll album by mail order in the United States.

The relevant contracts with EMI and Capitol are as follows. In 1962 the Beatles made a contract with EMI giving EMI the exclusive right to distribute their records. A new exclusive distributorship agreement was made in 1967 between the Beatles and EMI. It appears that under other agreements EMI licensed United States distribution rights to EMI's subsidiary Capitol.

In 1969 the parties modified these contractual arrangements. Under an agreement dated September 1, 1969 EMI granted an exclusive license to Apple to manufacture and distribute Beatles records in North America. However, the agreement required Apple to appoint Capitol as its record distributor in the United States under a form of contract approved by EMI. Moreover, the 1969 EMI-Apple agreement provided:

"8. NEITHER party may assign this agreement or any part thereof or rights hereunder without the written consent of the other"

Under date of September 1, 1969 Apple entered into the agreement, approved by EMI, appointing Capitol to be the distributor for Apple's records in North America. However, the 1969 Apple-Capitol distribution agreement contained the following provision:

"ARTICLE III

DISTRIBUTION

1. Apple hereby grants to Capitol and Distributor and they each do hereby accept all of the rights which Apple derives under the Licensing Contract, except (i) the right to manufacture records in the United States, (ii) the distribution by mail direct to consumers, and (iii) the right to manufacture and distribute one motion picture sound track album which Apple is obligated to give to United Artists under a pre-existing contractual arrangement." [Emphasis added]

Plaintiffs rely on Article III, Section 1(ii), quoted above, for their argument that Apple retained the rights for mail order distribution in North America, and had the power to grant such rights to Levy.

Defendants contend that the reservation of mail order distribution rights for Apple was more limited than the language might indicate. Defendants refer to evidence that, in the negotiations of the 1969 agreements, the discussions of mail order distribution related mainly to "record club" distribution,

and had nothing to do with the type of mail order distribution carried out by Levy. I will not set forth the full intricacies of defendants' position. It is sufficient for present purposes to state that defendants raise questions of substance about the interpretation of the language in question.

Defendants argue alternatively that, even if plaintiffs are correct in their interpretation of the Apple-Capitol agreement as reserving full mail order rights to Apple, all of this is subject to an underlying restriction contained in the EMI-Apple agreement of 1969. Defendants refer to the provision, quoted earlier, which prohibits any party to that agreement from assigning that agreement or any right under it without the consent of the other party. Defendants contend that this provision prevented Apple or Lennon from granting Levy any distribution rights, including mail order rights, without the consent of EMI.

The interpretation of this provision in the EMI-Apple contract is also hotly contested. Plaintiffs

contend that the provision refers only to assignments, whereas all that Lennon agreed to do on October 8, 1974 was to grant a license to Levy. Again, there are substantial questions of interpretation.

The relevance of these circumstances to the present case is that, when Lennon entered the meeting of October 8, 1974, he did not do so as a free agent. Both Lennon and Apple were obligated to EMI and Capitol under a complex series of agreements. The agreements were not present for review or analysis at the October 8 meeting. No representative of EMI or Capitol was at the meeting. A crucial question in the case is whether, under these circumstances, the parties at the meeting had any intention of making a binding contract granting distribution rights, mail order or otherwise, to Levy.

IV.

Although an abundance of evidence was introduced about discussions and other events happening subsequent to the meeting of October 8, plaintiffs rely solely on this meeting as being the occasion when

the alleged contract was created. The material about the subsequent events is relevant only as circumstantial evidence on the question of whether or not a contract was made on October 8. Moreover, it is conceded that neither the alleged contract nor any terms thereof were ever reduced to writing. Plaintiffs' sole reliance is upon an alleged oral agreement.

The meeting of October 8, 1974 at the Club Cavallero was attended by Levy, Lennon and Seider. It was also attended by an employee of Big Seven by the name of Phil Kahl¹; Lennon's secretary, May Pang; and a business associate of Lennon from England, Bernard Brown.

It is agreed that the meeting started with a discussion of the problem about the October 1973 settlement and the difficulty with Spector which caused work on the rock and roll album to come to a halt. It is further agreed that the discussion turned to the possibility of Lennon completing the rock and roll album and having it marketed by Levy through television promotion. Lennon was unquestionably interested in such

a possibility, because he felt that the delay in completion of the album had somehow diminished its chance of success if it were marketed through normal channels, and because he was attracted to the idea of using a different means of promotion and distribution.

The question is whether the discussions of October 8, 1974 went beyond expressions of interest and resulted in the creation of an actual contract. Plaintiffs claim that they did so, and that a contract was arrived at which superseded the October 1973 settlement.

There is a sharp dispute among the parties as to what terms would be necessary to be agreed upon in order to make a valid contract of the nature claimed by plaintiffs. However, it would appear clear that, at the very minimum, the following terms would be necessary:

1. That Lennon would grant Levy or one of his companies the right to distribute a record of Lennon's songs.

2. That Lennon would provide Levy with the songs.

3. That Levy would pay Lennon or Apple a royalty -- the amount and method of calculation being specified with reasonable certainty.

V.

It is necessary to analyze in some detail the evidence regarding the first of these items.

Prior to the trial of this action, Levy made a number of sworn assertions as to what the terms of the alleged agreement were, all to the effect that the contract of October 8, 1974 granted him worldwide rights for distribution through both mail order and retail fulfillment centers. However, after several days of trial plaintiffs indicated their recognition that no such contract was possible. Plaintiffs concede that EMI had the exclusive rights to distribute Lennon's records outside North America. Plaintiffs further

concede that Capitol had the exclusive rights to distribute Lennon's records through retail channels in North America (including retail fulfillment centers), and that the only possible distribution rights reserved to Lennon or Apple were those relating to mail order distribution in North America.

Accordingly, plaintiffs amended their claim as to the terms of the alleged contract. Plaintiffs now assert that the contract of October 8, 1974 was for Levy to market Lennon's rock and roll album solely through mail order distribution in the United States.

The fact that Levy and plaintiffs have experienced such difficulty in formulating the terms of the contract for presentation to the court is sufficient in itself to cast doubt on whether there was ever a contract at all. Moreover, the testimony about the October 8 meeting does not show by anything approaching a preponderance of the evidence that an agreement was made for Levy to have United States mail order distribution rights for Lennon's rock and roll album.

Levy testified that at the October 8 meeting, in the course of outlining his method of television merchandising to Lennon and Seider, he described both mail order and retail fulfillment center sales. In fact, according to Levy's testimony he indicated at the meeting that a mail order campaign tends to be preliminary to the more important, and more lengthy, efforts to market through the retail fulfillment centers.

Levy testified that at some point in the meeting the crucial question arose as to whether Lennon was able to grant Levy the rights to market Lennon's rock and roll album. According to Levy, Seider stated that permissions would be needed from EMI -- certainly for foreign distribution, and possibly for distribution in the United States. Levy testified that he assured Seider that permission would not be needed for television mail order distribution in the United States. Levy testified as follows regarding Seider's alleged response:

"Did Mr. Seider or Mr. Lennon respond to what you said, and if so, what did they say?

"A. Mr. Seider said he believed that was right as far as the United States was concerned, but as far as the rest of the world was concerned he felt permission was needed from EMI.

"Q. Was anything said on the subject of retail fulfillment centers, whether permission was needed?

"A. He didn't think it was. He thought it might be, but he didn't think it was needed at all.

"Q. Is that what he said?

"A. Yes, sir. He didn't think it was needed."

Kahl corroborates the essential points of Levy's testimony on this subject. Plaintiffs construe this exchange as somehow constituting an "agreement" that Capitol and EMI had no rights with respect to mail order distribution in the United States which would prevent Lennon and Apple from granting such rights to Levy.

It is of interest to note the sources, according to Levy's testimony, from which Levy felt he could advise Seider and Lennon on the question of Lennon's contractual obligations with Capitol and EMI. Levy testified that in 1973, in connection with discussions about Levy issuing an album of Beatle records, Levy had been told by Allen Klein, the then manager of the Beatles, that permission from Capitol was not needed to do a mail order campaign in the United States. The second source relied upon by Levy was a published interview with Allen Klein in the November 1971 issue of Playboy in which Klein was quoted as describing the 1969 contracts as follows (Playboy Vol. 18 No. 11, p. 98):

"We had 'em. So we worked out a new contract. We got the boys increased royalties, but more important than that, we got them total control and ownership of their product in America."

Defendants, pointing to what they consider flaws in Levy's own testimony, and relying on the opposing testimony of Lennon, Seider and Brown, deny that there was any on-the-spot determination about Lennon's ability to grant distribution rights to Levy. According to the defense witnesses, Levy was told that permission was needed from EMI before any rights could be granted to him. Brown testified that Levy's response was to urge Seider to fly immediately to see EMI in London, which Seider declined to do.

I find for defendants on this point. There is no substantial evidence to indicate that the parties to the October 8 meeting singled out the United States mail order rights, as distinct from all other rights, and "agreed" that Lennon had the ability to convey the former to Levy.

Moreover, aside from this question of Lennon's ability to grant mail order rights to Levy, there is the additional question of whether, in view of the relevant commercial considerations, Lennon was willing to have Levy market Lennon's rock and roll album solely

on a mail order basis. It should be noted that Levy, according to his own testimony, described both mail order and retail fulfillment center distribution to Lennon and Seider. If the parties then agreed to forgo Levy's retail fulfillment center distribution and proceed only with mail order sales, one would expect some specific discussion to this effect. Even Levy's testimony fails to reveal anything of this kind, and I find that no such discussion occurred.

VI.

Earlier in this opinion I noted that, in order to have a valid contract between Lennon and Levy, there would need to be an agreement that Lennon would provide songs to Levy, and an agreement as to the amount and method of calculation for the royalty which Levy would pay to Lennon or Apple.

I find, on the basis of the evidence, that there was a tentative agreement for Lennon to provide 15 or 16 rock and roll songs in the event that Lennon in fact made a record album for Levy. However, I find that plaintiffs have not shown that there was any

agreement on the amount or method of calculation of the royalty.

My findings thus far are sufficient to indicate that no contract was made at the October 8 meeting for Lennon and Apple to produce a record album for distribution by Levy or one of his companies. Moreover, there was no agreement to abrogate the October 1973 settlement. It is unnecessary to describe the various other subjects discussed at that meeting.

VII.

The following are the essential facts about the events occurring after October 8.

Because of Lennon's interest in the possibility of having his rock and roll album marketed by Levy, Lennon invited Levy to hear the previously recorded Spector tapes on October 9, and accepted Levy's invitation to rehearse at Levy's farm in Ghent, New York, prior to the recording of the additional songs necessary to complete the album. The actual recording sessions for the additional songs were held October 21-25. In mid-November Lennon gave Levy tapes of the songs he intended to include in the rock and roll album. These

tapes were for Levy's listening, and had not been finally edited for use in a record.

On a few occasions Lennon made statements to musicians and to friends of Levy that he was making an album for Levy. Plaintiffs cite these as evidence of the existence of a contract. But such casual statements are inadequate to compensate for the fact that the terms of a contract had not in fact been worked out.

On November 18 or 19, there was a meeting between Levy and Seider. One Michael Graham, an attorney for Lennon, was also present. Levy urged Seider to speak to EMI about the permissions. There was a discussion of what Levy's costs would be in producing and promoting the record, with an attempt to indicate what would be available for Levy's profit and Lennon's royalty. The discussion was exploratory only.

At some point Seider, acting on behalf of Lennon, commenced sporadic attempts to communicate with EMI about a possible arrangement with Levy.

Seider chose to approach EMI rather than Capitol, because Seider believed that EMI might be willing to exert leverage with Capitol. No conversations of substance occurred between Seider and anyone at EMI or Capitol until early January 1975.

In late December 1974 Lennon, his 11-year old son Julian, and May Pang, were Levy's guests in Palm Beach and Orlando (Disneyworld), Florida. Seider met Lennon in Florida to discuss a contract, about to be signed, providing for the final dissolution of the Beatles partnership.² During the Florida trip Levy again urged Seider to pursue the matter of permissions with EMI, and Seider agreed to do so.

On December 31, 1974, an attorney for Lennon sent a letter to Levy stating that Lennon was prepared to go forward with the second phase of the October 1973 settlement. The letter made no reference to any possible arrangements regarding Levy's distribution of the Lennon rock and roll album. On January 9 Levy wrote Lennon's attorney asserting the claim that the October 1973 settlement had been superseded by an

agreement for Lennon to make a record which Levy would market "throughout the world by use of television advertising."

Meanwhile, Capitol became active. An executive of Capitol requested a meeting with Seider, which was held on January 9. On this occasion Seider explained to Capitol for the first time what had occurred at the meeting of October 8 and the discussions about the possibility of an arrangement between Lennon and Levy. As one might expect, Capitol was not interested in having Levy market a record album made by one of Capitol's artists. In subsequent meetings with Seider and Lennon in Los Angeles and New York, it was decided that Lennon's rock and roll album would be marketed through Capitol.

On January 29 or 30 Seider told Levy that there could be no agreement permitting Levy to distribute the album. Levy decided that he would nevertheless proceed with the album, using the tapes he had

received from Lennon in November. Levy called his album "Roots" and his company Adam VIII released it in early February.

Capitol directed that its version of the album be completed on a rush schedule. Lennon made the final editing of the tapes. Capitol's album, called "John Lennon Rock 'n' Roll," was released about February 15.

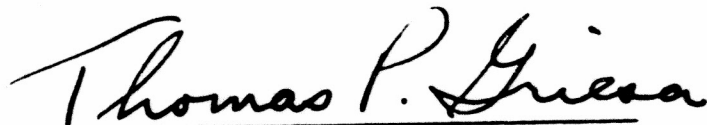
At about the time Levy's album was released, Capitol dispatched telegrams to various parties involved in the production and distribution of Levy's album, asserting that EMI and Capitol had exclusive rights in the songs and threatening to take legal action. The production and distribution of Levy's album came to a halt shortly thereafter.

I conclude, on the basis of the evidence about the October 8, 1974 meeting and on the basis of all the other relevant evidence, that no contract was entered into by Lennon or Apple granting Levy or one of

his companies the right to produce and distribute
Lennon's rock and roll album.

In view of the above ruling, it is
unnecessary to discuss the Statute of Frauds issue
raised by defendants.

Dated: New York, New York
February 20, 1976


THOMAS P. GRIESA
U.S.D.J.

FOOTNOTES

1. Kahl's legal name is Philip Kolsky, and he was sworn as a witness under that name.
2. One of the disputes among the Beatles for several years related to the question of who had the right to the earnings from recordings by individual members of the group. The agreement for the dissolution of the Beatles provided that after October 1, 1974 all recordings by individual Beatles and income arising therefrom would be treated as the property of the individual. I have considered the possibility that the October 1, 1974 date was inserted to cover a contract between Lennon and Levy on October 8, 1974. In view of all the evidence, I do not believe that such a thing has been established.

Opinion #44746.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
BIG SEVEN MUSIC CORP. and
ADAM VII, LTD.,
:
Plaintiffs, :
:
v. :
:
JOHN LENNON, APPLE RECORDS, INC., :
HAROLD SEIDER, CAPITOL RECORDS, :
INC., and EMI RECORDS, LIMITED, :
:
Defendants, :
:
and :
:
MORRIS LEVY, :
:
Additional :
Defendant on :
Counterclaim. :
-----X

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75 Civ. 1116-TPG

OPINION

44746

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GRIESA, J.

I.

This opinion deals with the final phase of a lawsuit which originally involved a claim that a record distributing company called Adam VIII, Ltd. (controlled by one Morris Levy) was wrongfully prevented from distributing a record album of rock and roll songs performed by defendant John Lennon. Suit was brought against Lennon and other defendants. In an opinion dated February 20, 1976 I held that Adam VIII was not entitled to recover on this claim. Big Seven Music Corp., et al. v. Lennon, et al., ____ F.Supp. ____ (S.D.N.Y. 1976). A second phase of the action dealt with counterclaims against Adam VIII and Levy. In an unreported bench decision of April 8, 1976 I held that damages should be awarded on certain of the counterclaims.

The final phase of this lawsuit involves a claim by plaintiff Big Seven Music Corp., a music publishing company controlled by Levy, that Lennon breached a settlement agreement entered into in connection with an action in this court entitled Big Seven

Music Corp. v. MacLen Music, Inc., Northern Songs, Ltd. and Apple Records, Inc. (S.D.N.Y. 70 Civ. 1348).

That was a copyright infringement action, in which Big Seven asserted that its copyright in a song written by Chuck Berry entitled "You Can't Catch Me" was infringed by a John Lennon song entitled "Come Together." The "Come Together Settlement Agreement" (as it has been referred to in the present lawsuit) was entered into on October 12, 1973, and was to be performed in two phases. In the first phase Lennon was to include three songs belonging to Big Seven in Lennon's "next album." It was agreed that one of these songs was to be "You Can't Catch Me." The other two songs were to be "Angel Baby" and "Ya Ya", although Lennon reserved the right to change the latter two songs to any other two songs belonging to Big Seven. In the second phase of the Come Together Settlement Agreement, Lennon agreed to use his best efforts to cause "an appropriate Apple company" (referring to companies owned by the Beatles) to license to Big Seven three non-Beatle songs from the Apple catalog, excluding songs written by Lennon and Yoko Ono or Paul and Linda McCartney. If the

Opinion #44746.

Apple company did not license the songs to Big Seven prior to December 31, 1974, Lennon agreed to record two more songs belonging to Big Seven. One of these additional songs was to be recorded prior to December 31, 1974 and the second prior to December 31, 1975.

II.

In the present action Big Seven contends that Lennon breached the Come Together Settlement Agreement in the following respects.

Big Seven argues that Lennon breached the first phase of the settlement agreement, since he failed to record three Big Seven songs in his "next album." There is an issue between the parties as to which of Lennon's record albums was his "next album" within the meaning of the settlement agreement -- Big Seven contending that it was an album entitled "Walls and Bridges" issued in September 1974, and Lennon contending that it was the album entitled "John Lennon Rock 'N' Roll" issued in February 1975. Big Seven contends that, in either case, there was a breach of the first phase of the settlement agreement. "Walls and Bridges" contained only one Big Seven song

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("Ya Ya"). "Rock 'N' Roll" contained two Big Seven songs ("You Can't Catch Me" and "Ya Ya"). Big Seven contends that at no time did Lennon record a third Big Seven song, as required.

Big Seven also contends that Lennon failed to perform the second phase of the settlement agreement, in that Lennon did not cause an Apple company to license songs to Big Seven.

III.

The terms of the Come Together Settlement Agreement were dictated at a hearing in court on October 12, 1973. In connection with the dispute over the meaning of the phrase "next album" the following excerpts from the minutes are relevant. The statements are those of Lennon's attorney, Michael Graham.

"The settlement agreement reached to dispose of this action is as follows:

"John Lennon agrees to record three songs belonging to Big Seven publishers on his next album. The songs which John Lennon intends to record at this time are 'You Can't Catch Me,' 'Angel Baby,' and 'Ya Ya.'"

"John Lennon reserves the right to alter the last two songs, that is, 'Angel Baby' and 'Ya Ya' to any

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other songs belonging to Big Seven but will in all events record 'You Can't Catch Me.'"

* * *

"I would like to make one statement to clarify my statement as to the next album.

"For the record, the next album being released by John Lennon will be an album of his next [sic] recordings and the next album will be, in fact, the second album to be released."

In the last passage the phrase "next recordings" contains an obvious typographical error, and should read "own recordings." This passage refers to the fact that an album of songs written by Lennon, entitled "Mind Games," was about to be released. Thus the phrase "next album" used in the original statement of the settlement did not literally mean the next album issued by Lennon.

By letter dated October 30, 1973 Graham confirmed the terms of the settlement agreement to his client, Lennon. This letter stated in part:

"The settlement agreement, as you know, provides that you will record three (3) compositions, in whole or in part, owned by Big Seven Music Corp. ("Big Seven"), on your next

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album and that one (1) of the songs to be recorded, in whole or in part, shall be 'You Can't Catch Me.' You have the right to choose the remaining two (2) songs from the entire catalogue of compositions belonging to Big Seven."

IV.

At the time Lennon entered into the Come Together Settlement Agreement he was in California recording an album to be composed of rock and roll songs from the 1950's which Lennon had sung as a teenager. The recording sessions were with a well-known producer of popular records named Phil Spector.

After several songs for the rock and roll album had been recorded, including the three Big Seven songs mentioned in the settlement agreement ("You Can't Catch Me," "Angel Baby" and "Ya Ya"), Spector terminated the recording sessions and appropriated the tapes. The tapes were not recovered until July 1974. However, in the meantime, Lennon had started work on the album later entitled "Walls and Bridges" and decided to finish the latter album before resuming work in the rock and roll album.

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"Walls and Bridges" was released in September 1974. This album consisted entirely of songs written and sung by Lennon, except for a shortened version of "Ya Ya" (written by Morris Levy and Clarence L. Lewis, and owned by Big Seven) which was sung by Lennon and his young son, Julian. In the summer of 1974 Lennon's attorney, Graham, spoke to Lennon's business manager, Harold Seider, about whether the release of "Walls and Bridges" without three Big Seven songs would constitute a violation of the Come Together Settlement Agreement. Graham and Seider agreed that no breach would be involved. This decision was not communicated to Levy or Big Seven.

Shortly after the release of "Walls and Bridges," counsel for Big Seven complained to counsel for Lennon that the Come Together Settlement Agreement had been breached. This led to the meeting of October 8, 1974 attended by Lennon, Levy and others, and the subsequent events described in my earlier opinions in this action.

Levy claimed that Lennon had made an agreement at the October 8, 1974 meeting to complete the rock and roll album and to grant one of Levy's companies the right to distribute this album. I held in my earlier opinion that no such agreement was made.

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In any event, shortly after the October 8, 1974 meeting, Lennon resumed work on the rock and roll album, and recorded additional songs on October 21-25, 1974. Capitol's intention was to issue this album in March or April 1975.

On December 31, 1974 David Dolgenes, a lawyer for Lennon, wrote Big Seven stating that seven Apple songs were available for licensing and that, pursuant to the 1973 settlement, Big Seven could choose three of them. This referred to the second phase of the Come Together Settlement Agreement, described earlier. Levy responded in a letter dated January 9, 1975, rejecting this offer of licenses and further stating that the settlement agreement was no longer in effect. The letter stated:

"I was surprised, to say the least to receive your letter dated December 31, 1974. The stipulation of settlement entered into on October 14, 1973, was breeched by John Lennon and since that time this entire matter has been resolved during meetings with John Lennon, Harold Sider, (John Lennon's attorney) and myself. In accordance with the agreement reached during those negotiations, John Lennon has recorded sixteen (16) sides which I will market throughout the world by use of television advertising.

"Please adjust your records to indicate that the original stipulation is no longer of any effect."

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The intention of Levy to market his own album based upon tapes of the Lennon rock and roll recordings precipitated an effort by Lennon and Capitol Records to rush their own album to completion and to issue this album several weeks ahead of the intended time.

Lennon carried out his final editing work in early February. At this time, Lennon believed that it was necessary to cut some of the music in order to keep the record within what he considered proper time limits. Lennon decided that he wanted to take "the weakest tracks off." Lennon considered that these were "Angel Baby" (a Big Seven song) and another song entitled "Be My Baby." Lennon consulted with his business advisor, Seider, who told Lennon that the decision was a matter of Lennon's artistic judgment. Lennon dropped these two songs. It should be noted that when "Angel Baby" was played in court there was a discernible problem with the singing being out of tune with the instruments. However, the evidence was not clear as to what steps, and what length of time, would have been required to make the corrections if Lennon had decided to use the song.

The Capitol album entitled "John Lennon Rock 'N' Roll" was released on February 13, 1975. It contained two Big Seven songs, "Ya Ya" and "You Can't Catch Me." It did not contain "Angel Baby" or any other "third song" of Big Seven.

V.

As a threshold issue, I must consider an argument of Lennon that Big Seven is "judicially estopped" from seeking enforcement of the Come Together Settlement Agreement. Lennon notes the position taken by Big Seven in the earlier phases of this litigation that there was an oral contract entered into on October 8, 1974 which completely supplanted the settlement agreement. Lennon contends that this position was a deliberate -- and indeed essential -- part of Big Seven's strategy; Big Seven wished to counter the argument made by its opponents in this litigation that, if any agreement was made on October 8, 1974, such agreement was an executory accord and invalid under the statute of frauds. N.Y. General Obligations Law § 15-501(2). Lennon asserts that Big Seven cannot now take an inconsistent position and try to enforce the 1973 settlement.

The law on this point is stated in Twentieth Century Fox Film Corp. v. National Publishers, Inc., 294 F.Supp. 10, 12 (S.D.N.Y. 1968):

"Ordinarily the mere institution of a lawsuit asserting a claim based on one theory, or seeking one type of relief, does not constitute a binding election precluding the assertion of alternative or inconsistent claims or remedies in the same or another action....A binding election occurs only where one party pursues a remedy to the point where, in reliance upon such action, the other changes his position to his detriment. Thereupon the first party is estopped or precluded from pursuing an inconsistent remedy."

In the present case there has been no detrimental reliance by Lennon on Big Seven's original position that the 1973 settlement had been abrogated by a new agreement. From the outset of this controversy Lennon has consistently asserted that there was no agreement whatever entered into on October 8, 1974 replacing in any way the Come Together Settlement Agreement.

I held in my opinion of February 20, 1976 that there was no agreement made on October 8, 1974 for Lennon to produce a record album for distribution by Morris Levy or one of his companies, and no agreement to abrogate the October 1973 settlement. There is no bar to Big Seven now seeking to enforce that October 1973 settlement.

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VI.

The next question to be resolved is what was meant by the phrase "next album" in the Come Together Settlement Agreement. This determines whether it was "Walls and Bridges" or "Rock 'N' Roll" which should be considered the album required to contain the three Big Seven songs under the first phase of the settlement agreement.

Big Seven contends that the phrase "next album" is entirely clear and unambiguous, and that the phrase points inevitably to the Lennon album entitled "Walls and Bridges." Big Seven contends that there was a breach of the first phase of the Come Together Settlement Agreement in that "Walls and Bridges" contained only one Big Seven song ("Ya Ya") instead of the required three Big Seven songs.

I disagree with Big Seven as to the lack of any interpretative problems in respect to the phrase "next album." Indeed, when the settlement agreement was placed on the minutes of the court on October 12, 1973, it soon became evident that the phrase "next album" had been used rather loosely, and that the parties were not literally referring to the next album to be issued by Lennon. During the discussion on the

record, counsel for Lennon noted that the actual next album to be released by Lennon was one entitled "Mind Games," and made it clear that this album would not contain the three Big Seven songs.

This is a case where extrinsic evidence should be resorted to in order to interpret the language of an agreement. 67 Wall Street Co. v. Franklin National Bank, 37 N.Y.2d 245, 371 N.Y.S.2d 915 (1975). The evidence taken as a whole demonstrates that the parties had in mind the rock and roll album as the "next album." Lennon was working on this album at the time of the Come Together Settlement Agreement. It was thought at that time that this would indeed be Lennon's next album, following the issuance of "Mind Games." The three Big Seven songs referred to in the settlement agreement were all rock and roll songs.

The three Big Seven songs were not intended for an album such as "Walls and Bridges." This album consisted almost entirely of songs written by Lennon. To be sure, "Walls and Bridges" contained a kind of "joke" version of "Ya Ya." But the presence of full versions of the three rock and roll songs referred to

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in the settlement agreement, all three of which were written by persons other than Lennon, would have been totally out of character with the general musical content of "Walls and Bridges." Indeed, the same would have been true of other Lennon albums, except for the rock and roll album.

I conclude that the phrase "next album" in the Come Together Settlement Agreement referred to the rock and roll album, and that it was in that album that Lennon was obligated to include the three Big Seven songs.

VII.

As noted earlier, the album entitled "John Lennon Rock 'N' Roll," issued in February 1975, contained two Big Seven songs, "You Can't Catch Me" and "Ya Ya" but did not include a third Big Seven song.

Lennon contends that the omission of the third song from "Rock 'N' Roll" was not a breach of the Come Together Settlement Agreement because a "third song" -- namely, a version of "Ya Ya" -- was on "Walls and Bridges." I reject this argument. The settlement agreement requires the recording of three different songs, and was not satisfied by two recordings of "Ya Ya."

I hold that Lennon breached the Come Together Settlement Agreement in failing to include a third Big Seven song in the "Rock 'N' Roll" album.¹

VIII.

For this breach, Big Seven is entitled to damages for lost mechanical royalties. The so-called "domestic" sales of "Rock 'N' Roll" were 342,000 albums. Big Seven would have been entitled to a mechanical royalty at the rate of 2¢ per album on the third song if it had been included in that album. This would have yielded mechanical royalties of \$6,840. Deducting 50% for the payment which Big Seven would have to make to the writer of the song, the net amount would have been reduced to \$3,420.

The calculation of lost mechanical royalties on foreign sales is somewhat more complicated. In most

1. Prior to completing this opinion, I considered whether Lennon might not have been excused from including the third Big Seven song in the "Rock 'N' Roll" album on the theory that the recording of the intended third song -- "Angel Baby" -- was inferior in quality, requiring remedial action not able to be accomplished prior to the accelerated deadline for issuing the album -- such accelerated deadline having been made necessary by Levy's issuance of his unauthorized album. This was a theory which had not been advanced by Lennon. I obtained the views of counsel on this question at a hearing held June 29, 1976. I have now concluded that there is insufficient evidence to support the above theory.

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foreign countries Big Seven works through subsidiary corporations. The laws of the foreign countries generally limit the amounts of royalties which the subsidiaries can remit to Big Seven in the United States. It is agreed that the average remission permitted is 50% of the gross royalties collected in the foreign country.

The gross royalties which would have been collected by the Big Seven subsidiaries in foreign countries on a third song included in "Rock 'N' Roll" would have been \$16,872. There should be a deduction of 20% for extra selling costs in foreign countries -- leaving \$13,498 after this deduction. Of this amount an average of 50% is remitted to Big Seven in the United States. This 50% remission equals \$6,749. Big Seven must pay a writer's share of 50% of this amount -- leaving net royalties on foreign sales for Big Seven of \$3,375. Thus, the total damages to which Big Seven is entitled for lost mechanical royalties on the third song is equal to the net lost domestic royalties of \$3,420 plus the net lost foreign royalties of \$3,375 -- or a total of \$6,795.

The only point of contention with respect to this damage calculation relates to the propriety of limiting foreign royalties to the average 50% re-mission. I accept Lennon's argument that Big Seven is not entitled to recover for amounts which its foreign subsidiaries would be required to retain in foreign countries.

IX.

The damage calculations described above are based upon figures for actual sales of the "Rock 'N' Roll" album as of the time of the trial of this action. However, Big Seven asserts an additional theory of damages on which it seeks to recover an amount far in excess of the modest amount yielded by the above calculation.

Originally, Big Seven formulated this additional theory as relating to "cover records" by artists other than Lennon, which would have yielded additional royalties. The idea was that the recording of a song by a prominent artist such as Lennon would increase the popularity of the song and stimulate other artists to record it. Big Seven introduced the testimony of certain witnesses experienced in music publishing to the effect that this type of

"enhancement" of the value of a song copyright was bound to occur following a recording by an artist such as Lennon. One of these witnesses referred to a song entitled "Close to You." This song earned an average of about \$1,500 a year for its first seven years; then a group called "The Carpenters" recorded it in 1970, and the song became an enormous hit. Not only were there substantial mechanical royalties earned on the version recorded by The Carpenters, but in addition there were literally dozens of records made by other artists following the recording by The Carpenters. The total royalties earned on the song since 1970 have been about \$339,000. The witness from the publishing company estimated that at least two-thirds of these earnings were from the cover records by artists other than The Carpenters.

Big Seven introduced the earnings records of four songs owned by one of Levy's companies. In each instance the particular song produced low earnings until it was recorded by a prominent artist, after which the earnings increased dramatically -- presumably because of a proliferation of cover records by other artists.

Big Seven's evidence turned out to have certain fatal defects, the most important of which I will summarize here. Big Seven's witnesses failed to provide any real analysis directed to "Angel Baby," the Big Seven song which Lennon cut from his rock and roll album. None of Big Seven's witnesses analyzed the characteristics of "Angel Baby" or attempted to assess the likelihood of its becoming a hit, with numerous cover records, following a recording by Lennon.

The only witness who specifically attempted to analyze "Angel Baby" was an expert witness who testified for Lennon. This witness testified that "Angel Baby" was not the kind of a song which was likely to give rise to numerous cover records even after a recording by an artist such as Lennon. This witness testified that, to the extent "Angel Baby" achieved popularity, this was largely due to the type of sound produced by the recording artists. This is in contrast to a "song hit" such as "Close to You," which has a great potential for being picked

up by numerous artists and being recorded over and
2
over.

Another flaw in Big Seven's proof related to the evidence about the four songs owned by one of Levy's companies, which was originally supposed to illustrate that numerous cover records would be made by other artists after a star such as Lennon recorded a song. When complete information on these songs was finally provided, this showed that in each case there were substantial mechanical royalties from the records of the song made by "the star." But earnings from cover records made by other artists were minimal.

2. Big Seven urges that the damage claim relating to the failure to record a third Big Seven song should not be decided on the basis of evidence about the characteristics of "Angel Baby" or the non-likelihood of that song resulting in cover records. Big Seven argues that the contract did not require the inclusion of "Angel Baby," but allowed Lennon to substitute another song.

However, I believe that it is highly appropriate to consider "Angel Baby" in connection with the damage claim. "Angel Baby" was the third song specifically referred to in the settlement agreement, despite the fact that Lennon was given the option of changing to another song. Moreover, Lennon fully intended to use "Angel Baby" as the third song until it was cut in the final editing process. No other song was substituted.

Big Seven also sought to prove that Lennon's recording of "You Can't Catch Me" had led to a cover record of that song by a prominent artist named Stephen Stills. However, the defense proved that Stephen Stills' recording of "You Can't Catch Me" was made in March 1974, before the release of Lennon's album, although the actual release of the Stills recording was not made until January 1976 for certain apparent administrative reasons. In any event, the Stephen Stills recording of "You Can't Catch Me" was not a cover record stimulated by Lennon's recording of that song.

The problem was sufficient to cause Big Seven to shift its ground. As articulated by Big Seven's attorney on oral argument"

"...we concede that the four songs that we picked ultimately showed very little being generated by artists other than the one who was the principal artist who was re-recording the song, if I can phrase it that way." (Tr. 4115)

Big Seven then changed its emphasis to the theory that a recording of a third Big Seven song by Lennon would have led to reissues of that recording in another Lennon album (such as a "Best Of ..." album), or in a single record.

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I have analyzed the evidence both as to the possibility of reissues of a Lennon recording of "Angel Baby," and as to the possibility of the making of cover records by other artists following a Lennon recording of "Angel Baby." I have concluded that on both points there has been a failure of proof on the part of Big Seven, and that any award of damages on these claims could only be based on speculation.

At the oral argument there was a fleeting suggestion about the possibility of damages for lost mechanical royalties on a third Big Seven song directly from further sales of the "Rock 'N' Roll" album (as distinct from reissues of the Lennon recording in another form or cover records by other artists). However, there is no basis in the evidence for estimating any sales of the "Rock 'N' Roll" album beyond the 342,000 figure used at the trial of this action, and this was virtually conceded by Big Seven's counsel (Tr. 4128). The point is that the 342,000 figure represents sales to dealers, which are subject to the right of return. Thus the returns might equal or exceed the amount of any further sales.

X.

Big Seven claims that it is entitled to specific performance of the second phase of the Come Together Settlement Agreement. As related earlier, Lennon agreed in the settlement agreement to use his best efforts to cause an Apple company to license three songs to Big Seven. If the Apple company did not license the songs to Big Seven prior to December 31, 1974, Lennon agreed to record two more songs belonging to Big Seven. On December 31, 1974 Lennon's attorney wrote that seven Apple songs were available for licensing, from which Big Seven could choose three. On January 9, 1975 Levy wrote rejecting the offer of licenses and stating that the settlement agreement was no longer in effect.

I hold that Levy's failure to accept Lennon's performance prevented Lennon from complying with the second phase of the settlement agreement. Under these circumstances Big Seven has no right to obtain a decree of specific performance.

I have considered Big Seven's arguments about certain alleged defects in the December 31,

1974 letter and certain alleged impediments to performance of the second phase of the settlement agreement presented by an underlying agreement involving the Beatles. These arguments of Big Seven are of no weight, and do not deserve detailed discussion. It is obvious that the reason Levy did not receive licenses of three Apple songs is that he refused them.

XI.

Big Seven asserts a claim for punitive damages in connection with Lennon's breach of the Come Together Settlement Agreement. No citation of authority is provided in support of this claim.

The general rule appears to be that punitive damages are not recoverable for breach of contract.

5 A. Corbin, Corbin on Contracts § 1077 at 437-40 (1964); Restatement of Contracts § 342 (1932).

Conclusion

Big Seven is entitled to judgment against Lennon in the amount of \$6,795, with interest from February 15, 1975, on its claim for compensatory damages for breach of contract. Lennon is entitled

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to judgment against Big Seven dismissing the claims
for punitive damages and specific performance.

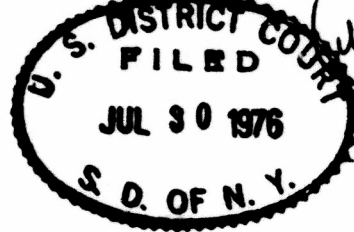
Settle judgment.

Dated: New York, New York
July 13, 1976


THOMAS P. GRIESA
U.S.D.J.

Notice of Motion for an Order Pursuant to Rule 52(b)
and 59(a) FRCP Vacating or Modifying This Courts
Findings and Conclusions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional
Defendant on
Counterclaim.
----- x

NOTICE OF MOTION

75 Civ. 1116 (TPG)

S I R S :

PLEASE TAKE NOTICE, that pursuant to the Court's direc-
tion at a hearing held on July 23, 1976, a motion will be made by
plaintiff Adam VIII, Ltd. and defendant on counterclaim Morris
Levy on August 2, 1976 at 2:30 P.M. at the United States Court-
house, Foley Square, New York, New York, for an order pursuant to
Rules 52(b) and 59(a) of the Federal Rules of Civil Procedure

Notice of Motion.

vacating or modifying this Court's findings and conclusions with respect to defendant's counterclaims or for a new trial.

WALTER, CONSTON, SCHURTMAN
& GUMPEL, P.C.

By *John J. Fanger*
A Member of the Firm
Attorneys for Plaintiff
Adam VIII, Ltd. and Defendant
on Counterclaim Morris Levy
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TO:

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AK/rt
#722
7/29/76

Affidavit of Alan Kanzer in Support of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BIG SEVEN MUSIC CORP. and	:	
ADAM VIII, LTD.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	<u>AFFIDAVIT</u>
JOHN LENNON, APPLE RECORDS, INC.,	:	
HAROLD SEIDER, CAPITOL RECORDS,	:	
INC. and EMI RECORDS LIMITED,	:	75 Civ. 1116 (TPG)
	:	
Defendants,	:	
	:	
-and-	:	
	:	
MORRIS LEVY,	:	
	:	
Additional Defendant	:	
on Counterclaim	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ALAN KANZER, being duly sworn, deposes and says:

1. I am a member of the firm of Walter, Conston, Schurtman & Gumpel, P.C., attorneys for plaintiff Adam VIII, Ltd. and defendant on counterclaim Morris Levy (hereinafter referred to collectively as "Adam VIII and Levy").

2. I submit this affidavit in support of the motion of Adam VIII and Levy pursuant to Rules 52(b) and 59(a) of the Federal Rules of Civil Procedure with respect to defendants' counterclaims.

3. Adam VIII and Levy respectfully urge the Court to vacate or modify its findings and conclusions with respect to the counterclaims or to order a new trial or take such additional evidence as may be appropriate on the following grounds:

Affidavit of Alan Kanzer.

A. The Court's computation of the amount of the damages awarded defendants on the additional 100,000 units is erroneous because it does not deduct savings of AFM expenses* and Spector royalties and is based on incorrect cost figures; and

B. The Court's award of damages for defendants' losses resulting from the reduced price of Rock 'n Roll and its computation thereof are erroneous because:

(i) the award is based on an improper and misleading use of evidence concerning the sale of Adam VIII albums at Jimmy's Music World; (ii) the computation fails to include in costs AFM payments and royalty payments to Spector; and (iii) the award includes lost profits and lost royalties on sales made by Capitol's Canadian subsidiary**.

* Although Adam VIII and Levy also contend that the television expenses which Capitol would have incurred but for Roots should also be deducted, the Court, on July 23, 1976, when this matter was raised, rejected that contention, so it will not be repeated herein.

** Adam VIII and Levy do not intend to raise in this motion all of the errors which they or Big Seven Music Corp. believe this Court has made during the course of trial or in its findings of fact and conclusions of law, and they specifically reserve the right to raise any such errors when they take an appeal to the Court of Appeals, irrespective of whether such errors have or could have been raised herein.

Affidavit of Alan Kanzer.

The AFM Payments

4. When the Court calculated the profits Capitol would have made had an additional 100,000 units of Rock 'n Roll been sold, it assumed a net profit of \$1.47 per each additional unit (Tr. 3470), a figure that comes from Plaintiffs' Exhibit 241A, a document prepared by Capitol which purports to compare Capitol's costs and profits on records and tapes with a manufacturer's suggested retail price ("list price") of \$5.98 and \$6.98 respectively, with records and tapes having a list price of \$6.98 and \$7.98 respectively.

5. An examination of PX 241A reveals that no allowance was made therein for payments to the American Federation of Musicians ("AFM"). Moreover, Harold Posner, Capitol's director of financial planning and analysis, under whose supervision PX 241A was prepared, confirmed that AFM payments were not included among the costs reflected thereon since he claimed that those expenses were borne by Apple, rather than Capitol. (Tr. 3114-3115)

6. During the trial, Mr. Schurtman specifically raised the point that Capitol's damages should be reduced by the amount of AFM payments and argued that it was the defendants, and not the plaintiffs, who had the burden of showing the amount and payor of AFM fees (Tr. 3814-3818), a burden the defendants obviously did not meet since they offered no evidence at all as to AFM payments.

7. The standard AFM contract, to which all major record companies are parties, provides that for records and cassettes with list prices in excess of \$3.79, the record company must pay to the AFM .58% of the price of each record sold and .5% of the list price of each such tape or cassette sold, less an allowance for packaging costs. A copy of the applicable provisions of the standard AFM contract is attached as Exhibit A.

Affidavit of Alan Kanzer.

8. As the accompanying affidavit (Exhibit C) of Harvey Zucker, Adam VIII's comptroller, shows, the amount of AFM payments that would have to have been paid had the additional 100,000 units been sold is \$6,433.64.

9. Moreover, when the Court awarded Capitol damages for the additional profits it would have earned had Rock 'n Roll been sold at a list price of \$6.98/\$7.98 rather than \$5.98/\$6.98, it did not take into account the fact that the AFM payments would increase if the list price went up. As previously pointed out, PX 241A makes no allowance for AFM payments, so the extra AFM expense was also not included when Capitol calculated its additional net prices on a higher priced album to be \$.24 per unit.

10. As Mr. Zucker's accompanying affidavit further shows, the additional AFM payment that would have been due had Capitol sold the 342,000 units of Rock 'n Roll at list prices of \$6.98 and \$7.98 would be \$2,968.56.

11. Consequently, the total of additional AFM payments that would be due had another 100,000 copies of Rock 'n Roll been sold and had the album had a list price of one dollar more would be \$9,402.20.

12. While the record is unclear whether this sum would have to be paid by Capitol, Apple or Lennon, it is, in any case, an expense which should be deducted in calculating the defendants' lost profits in connection with both the additional 100,000 units and the reduced price of the album.

Pressing and jacket costs

13. In computing Capitol's profit margin of \$1.47 per album, the Court also relied on PX 241A.

Affidavit of Alan Kanzer.

14. Because defendants did not furnish any of their damage computations to Adam VIII and Levy during discovery or even before the trial of the counterclaims, Adam VIII and Levy had no meaningful opportunity at trial to test the accuracy of Capitol's figures.

15. As the Court will recall, Mr. Schurtman repeatedly complained that Capitol's costs were being presented solely through summary schedules and that Capitol's original books and records were not being offered in evidence to substantiate Capitol's cost figures. (See, e.g., Tr. 2926-2927, 2933 and 2948-2949).

16. Mr. Schurtman further stressed that the burden was on Capitol to prove its costs, not on plaintiffs to refute them. (Tr. 2933)

17. Nevertheless, the Court did not require Capitol to introduce in evidence its underlying records of costs, and gave Mr. Schurtman only one night to review Posner's worksheets (which still, of course, were only a witness' summary of the costs, rather than the actual records themselves) to pinpoint the costs as to which plaintiffs wished additional information, (Tr. 2934-2938) and indicated that such information could be ascertained through the deposition of Posner (Tr. 2934-2938), rather than through an inspection of the documents themselves, which apparently were all in Los Angeles (The "records" which Mr. Posner had in court and which Mr. Prettyman referred to as "extremely confidential" [Tr. 2938] were, I am advised by my partner, William Schurtman, Posner's workpapers, not the original books and records of account of Capitol.).

18. Subsequent to the trial, I consulted Abraham I. Massler, the President of Bestway Productions Inc., a major inde-

Affidavit of Alan Kanzer.

pendent record manufacturer that presses records for such well-known companies as London Records, Dover Publications and Golden Records.

19. In his accompanying affidavit (Exhibit D), Mr. Massler states that Capitol's reported costs for pressing a record and for manufacturing and printing the jacket are at least 20% lower than the industry norm, a discrepancy that causes Mr. Massler, who has been in the music industry for 30 years, seriously to doubt their accuracy.

20. Whereas Capitol claims that its costs for manufacturing the album and the jacket average only \$.40 (Tr. 3069), Mr. Massler states that his company's costs for comparable work would run between \$.48 and \$.49 per album, and that his costs are closely in line with industry averages.

21. On 100,000 units, the difference amounts to \$8,000 to \$9,000, or an average of \$8,500.

22. In view of Mr. Massler's affidavit, I respectfully request either that the Court reduce Capitol's damages by \$8,500 or reconsider its ruling and permit us to audit Capitol's figures.

Phil Spector royalties

23. Another cost that was not taken into account either in calculating the net profit figure of \$1.47 per unit or the additional costs that would have been incurred had 100,000 more units of Rock 'n Roll been sold is the royalty jointly payable to Phil Spector ("Spector") by EMI/Capitol and Lennon.*

* Since the Court denied (July 13, 1976 opinion, p.16) Big Seven recovery for the amount it would have had to pay to the song writer had Angel Baby been recorded, as required, under the 1973 Settlement (PX 11), and stressed repeatedly (See, e.g., Tr. 3813 and 4087) that awards were to be of "net losses", it would be unfair and improper to allow the defendants to receive the windfall of the amounts that would legally be due to Spector.

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24. Abundant evidence is in the record (Tr. 160, 161, 1209-1213, 1314-1315, 1318-1319, 1378) that a royalty payment of 3% (explained below) would have to be made to Spector, the producer of certain of Lennon's rock and roll recordings, if Spector's recordings were used in the Rock 'n Roll album. And the existence of the Spector-EMI royalty agreement and the fact that royalties to Spector would have to be paid by Lennon and MEI on a 50/50 basis was specifically brought to the Court's attention prior to its decision on the counterclaims (Tr. 1213).

25. In presenting proof as to the amount of damages they were entitled to, Lennon and EMI failed to offer the Spector-EMI royalty agreement in evidence and failed to deduct the royalties payable to Spector on both the sales of 342,000 units and the additional 100,000 units.

26. An examination of the May, 1974 agreement between Phil Spector Records Inc. and EMI, and a consent thereto signed by Lennon (Exhibit B annexed hereto) readily shows that Spector was to receive a pro rated 3% royalty, based on 90% of the bare record price of 100% of the number of units of Rock 'n Roll sold in the United States and the number of Spector recordings included on the album.

27. The "bare record price" of an album or cassette is defined by the contract as the list price less a packaging deduction which in the case of the album is \$.54 and in the case of the cassette is \$1.98.

28. Consequently, the "bare record price" for the purposes of calculating the amount payable to Spector in connection with the additional 100,000 units would be \$6.44 for the album and \$6.00 for the cassette. 90% of these amounts is \$5.796 for the record and \$5.40 for the cassette, and 3% thereof is

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\$.17388 and \$.162 respectively. Assuming half of the additional units would be records and the other half cassettes (an assumption the Court adopted in computing Lennon's lost royalties [Tr. 3473]), the average royalty per unit would be \$.16794, and total royalties (before pro rating) would be \$16,794.

29. Since four Spector recordings (Bony Maronie, Sweet Little Sixteen, Just Because and You Can't Catch Me) were included in the 13 tracks released on Rock 'n Roll, Spector would be entitled to 4/13ths of \$16,794 or \$5,167.38 as a royalty in connection with the sale of the additional 100,000 albums. Consequently, Lennon's and Capitol's damages should each be reduced by one-half that amount or \$2,583.69 each.

30. Furthermore, Capitol apparently did not take the Spector royalties into account when calculating its net profit on a \$5.98/\$6.98 and \$6.98/\$7.98 price structure for an album and tape.

31. As a result, the additional \$.24 per unit which Capitol calculated it would have received if it had not reduced its price for the Rock 'n Roll album is overstated by \$.0083076*, which, on 342,000 units, amounts to \$2,841.20, which should be deducted from Capitol's award.

Jimmy's Music World

32. Defendants admitted, without qualification, that:

"The price of the album, \$5.98, had been decided upon in part because the songs on the album were titles previously recorded by other artists rather than new songs and in part because of the competition from Roots, which was to be sold for \$4.98." (Emphasis added)

* If the bare record price is increased by \$1.00, 90% of that is \$.90 and 3% thereof is \$.027. 4/13ths thereof is \$.0083076.

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Paragraph 126 of Defendants' Amended Joint Statement of Undisputed Facts dated January 6, 1976 (Plaintiffs' Exhibit 102).

33. Defendants also admitted over and over that they knew before making their price reduction that "Roots" would be sold at \$4.98.

- ¶126 of Defendants' Statement quoted above in ¶32 of this affidavit
- Menon admitted it at Tr. 2383
- Zimmerman admitted it at Tr 2685
- Seider admitted it at Tr. 2027

34. Zimmerman also admitted that the actual retail selling price of Capitol's "6.98" album would range from \$3.66 to a high of \$4.69 (Tr. 2720).

35. In view of these admissions by defendants, we submit that the evidence showed that it simply was not necessary for Capitol to cut the price of an album which would retail at no more than \$4.79 in order to compete against an album selling for \$4.98.

36. As we noted in Plaintiffs' Memorandum Concerning Proof of Compensatory Damages (at p. 9a, footnote), we were puzzled by the Court's comment during the trial at Tr. 2691-2692:

"THE COURT: Mr. Schurtman, I don't understand the effect. Let's assume that there would be no discount beneath the \$4.98 price. Absolutely none. Still, \$4.98 is less than \$6.98." (Tr. 2691-2692)

37. The same view was repeated in the Court's findings:

"I am convinced that there was no reason whatever for a reduction of the suggested retail price for the album from \$6.98 to \$5.98 and a comparable reduction for the tape, except the reasonable belief that this was necessary to compete with Levy's \$4.98 album." (Tr. 3464)

38. I respectfully submit that the evidence was conclusive that the retail selling price of Capitol's "\$6.98" album would not exceed \$4.97 and that the proper basis of comparison should have been:

\$4.79 v. \$4.98
and not \$6.98 v. \$4.98

39. The court did raise the question during summation of whether the \$4.98 price of "Roots" was subject to any discounts, which might carry it below the \$4.79 retail price of Capitol's album (Tr. 3421).

40. The record shows that:

- (a) A television mail order package of the type sold by Adam VIII is not subject to discounts (Tr. 2691); and
- (b) Even if "Roots" were to have been sold through retail fulfillment centers (contrary to Levy's testimony that "Roots" was to be sold only by direct mail order [Tr. 1362]), the album would still have been initially sold at the \$4.98 price advertised by Adam VIII on television.*

41. In a last minute effort to overcome this proof, Mr. Prettyman, during summation, displayed to the Court Exhibits CI-1, CI-2, CI-3 and CI-4, four Adam VIII albums which he claimed had been sold at "Jimmy's Music World" for \$1.99 (Tr. 3425). The Court indicated its reliance on this proof at Tr. 3426.

42. Mr. Bergen, however, had introduced these albums in evidence during the first trial at Tr. 1687-1689 for completely

* Aside from the obvious fact that a retail fulfillment center would have no incentive to offer the album at a discounted price to a customer who, attracted by the television promotion campaign, came into the store to buy the album at the advertised price, the stores already were selling the albums at a lower than normal mark-up. (Tr. 138)

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different purposes. He had offered them solely to show (a) that Adam VIII records sold at \$3.98 (in order to rebut Levy's testimony that a \$4.98 price had been discussed with Lennon and Seider at the October 8, 1974 Cavallero meeting) and (b) that the Adam VIII albums stayed in the market for more than one year (in order to support defendants' Statute of Frauds defense).

43. Mr. Levy testified:

"What is the price?

A. \$3.98, \$3.98, \$3.98 and \$3.98.

"Q. These were all sold through television?

A. These were all for in store retail promotions and not for mail order. These were made specially for retail fulfillment centers, and That is a few years ago, and now the bottom price is \$4.98, and some people pay \$5.98."
(Emphasis added) (Tr. 1688)

* * *

"Q. How long has that album been sold?

A. We stopped selling it maybe three years ago. We unloaded them all as overstock."

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44. Defendants did not offer these four albums for the purpose of showing that they were being sold at "Jimmy's Music World" at a price of \$1.99 (Tr. 1687-1689).

45. As far as I can tell, the first time this last point was mentioned was during the summations, when Mr. Prettyman brought it up in order to persuade the Court that "Roots" might have been discounted from \$4.98 to \$1.99.*

* As a further indication that this was an afterthought that occurred to defendants only during plaintiffs' summation, I refer the Court to defendants' Amended Statement of Undisputed Facts dated January 7, 1976 (Plaintiffs' Exhibit 102) which spoke only of the need to compete against a \$4.98 price (\$126), and to Mr. Menon's testimony to the same effect (Tr. 2383). Neither referred to the possibility of any discounting by Adam VIII to \$1.99.

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46. I respectfully submit that this was an improper use of evidence which had been introduced for a completely different purpose. If the defendants had informed the Court that Exhibits CI-1, CI-2, CI-3 and CI-4 were being offered for the purpose of demonstrating that they had to cut the price of "Rock 'n Roll" in order to meet a \$1.99 price charged by "Jimmy's Music World", we would have had an opportunity to offer rebuttal evidence that:

- (a) Adam VIII's surplus records are not sold to surplus outlets, such as "Jimmy's Music World", until months after release, i.e., long after the effective competition period between Capitol and Adam VIII; and
- (b) Capitol's surplus records are also unloaded to surplus outlets such as "Jimmy's Music World", which also sells Capitol's records at \$1.99.

47. I annex as Exhibit E an affidavit from Charles J. Sutton, President of Sutton Distributors Inc., the operator of "Jimmy's Music World", which sets forth the testimony he would give if called as a witness in this case.

Sales by Canadian Record Corp.

48. Throughout the trial of defendants' counterclaims, Capitol stressed that it was not seeking damages for losses in connection with the sale of Rock 'n Roll in Canada.

49. Thus, for example, at page 2892 of the transcript, Mr. Schurtman had the following exchange with Mr. Prettyman:

"Mr. Schurtman: Are you claiming any damages with respect to Canadian sales?

Mr. Prettyman: No."

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50. A few minutes later, Mr. Prettyman explained that while there may in the future be some harm in Canada from plaintiffs' and Levy's alleged misconduct:

"I am not saying that there was no harm, but I am not asking for a dollar amount in terms of Canadian sales." (Tr. 2893)

51. Similarly, Posner admitted that there was no loss of sales in Canada (Tr. 2931) and that no claim was made for any loss in connection with the price of the album in Canada:

Mr. Schurtman: Now, first of all, did you also cut the price of the album in Canada and overseas?

Mr. Posner: Well, Canada, yes, and I guess overseas, too.

Mr. Schurtman: Why? You were not meeting any competition from Roots Canada or overseas?

Mr. Posner: No, and we didn't claim any loss." (Tr. 3028)

52. Moreover, Capitol offered no evidence as to what its profit margin was on sales in Canada or how much its profit margin in Canada varied with the price of the album.

53. Furthermore, since the prices in Canada were different from those in the United States - Rock 'n Roll sold at a list price of \$6.29 in Canada (Tr. 3029) - there is no reason to assume that Canadian Record Corp. ("CRC") suffered a loss of \$.24 per unit because its price for Rock 'n Roll was voluntarily lowered.

54. Consequently, there simply is no basis for this Court's award to Capitol of \$.24 per album for each of CRC's 65,000 sales of Rock 'n Roll (Tr. 3472).

55. Moreover, in this Court's decision of July 13, 1976 (p. 1) on Big Seven's claim against Lennon for breach of the

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October 1973 settlement agreement, the Court excluded from Big Seven's damages the mechanical royalties that would have been earned by Big Seven's foreign subsidiaries had Lennon duly recorded a third Big Seven song.

56. The basis for the exclusion appears to be the fact that the subsidiaries were not parties to the action and were legally independent entities. (Tr. 4070-4076)

57. The same reasoning, of course, applies in the case of CRC's alleged lost profits. CRC is a foreign subsidiary of Capitol (Tr. 2891), and no evidence was offered to prove what proportion, if any, of CRC's net profits was transmitted to Capitol.

58. Consequently, there is no justification for awarding Capitol damages of \$15,600 (65,000 times \$.24) for alleged losses by CRC allegedly resulting from its selling Rock 'n Roll at a reduced price.

59. Similarly, there is no basis for awarding Lennon additional royalties of \$.10 per unit for the 65,000 Canadian sales, since there is no basis for concluding that the list price of CRC's album was lowered by one dollar as a result of competition from Roots.

CONCLUSION

60. We therefore respectfully request that the Court:

- (A) Either deny defendants any award for the profits they allegedly lost as a result of reducing the list price of Rock 'n Roll by \$1.00 per unit, or reduce the award by \$2,968.56 for AFM payments, \$2,841.20 for Spector's royalties and \$22,100 with respect

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to Canadian sales (\$15,600 for Capitol and \$6,500 for Lennon), or a total of \$27,909.76;

(B) Reduce defendants' damages in connection with the 100,000 additional albums by \$6,433.64 for AFM payments, \$5,167.38 for Spector royalties, and \$8,500 for additional manufacturing costs, or a total of \$20,101.02; or

(C) Order a new trial on the question of damages.

Alan Kanzer
Alan Kanzer

Sworn to before me this
30th day of July, 1976.

Sheila Ashby
Notary Public

SHEILA ASHBY
Notary Public, State of New York
No. 31-5115250
Qualified in New York County
Commission Expires March 30, 1978

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

Exhibit A.

Attached hereto as Exhibit A are first,
"Addendum A" to the Phonograph Record
Trust Agreement and second, "Addendum A"
to the Phonograph Record Manufacturers'
Special Payments Fund Agreement.

Exhibit A.

ADDENDUM A

1. For the purposes of this Agreement, the terms "phonograph record" and "record" shall include phonograph records, wire or tape recordings, or other devices reproducing sound, and the term "master record" shall include any matrix, "mother," stamper or other device from which another such master record, phonograph record, wire or tape recording, or other device reproducing sound, is produced, reproduced, pressed or otherwise processed.

2. Each first party shall make payments to the Trustee, in the amounts computed as stated below, with respect to the sale during the period specified in "6" below, of phonograph records produced from master records containing music which was performed or conducted by musicians covered by, or required to be paid pursuant to, a collective bargaining agreement with the American Federation of Musicians of the United States and Canada known as Phonograph Record Labor Agreement (August, 1973) (but specifically excluding services solely as arranger, orchestrator or copyist) where such phonograph records are sold during said period by such first party, or, subject to the provisions of paragraph 2 (e) of the main text of this Agreement, by purchasers, lessees, licensees, transferees or other users deriving title, lease, license, or permission thereto, by operation of law or otherwise, by, from or through such first party.

3. The payments to the Trustee shall be computed as follows:

(a) .6% of the manufacturer's suggested retail list price of each record, when such price does not exceed \$3.79.

(b) For records where the manufacturer's suggested retail price exceeds \$3.79, .58% of the manufacturer's suggested retail list price and for wire or tape recordings or

Exhibit A.

other devices .5% of the manufacturer's suggested retail price.

With respect to a phonograph record produced after August 1, 1973, both from master records described in paragraph 2 of this Addendum A and recorded under Phonograph Record Labor Agreement (August, 1973) for which payments are due hereunder and from other master records, First Party shall pay that proportion of the amount provided for above as the number of such master records recorded under said Agreement bears to the total number of master records embodied in the phonograph record.

4. For the purpose of computing payments to the Trustee,

(a) Each first party will report 100% of net sales;

(b) Each First Party will have a packaging allowance in the country of manufacture or sale of 15% of the suggested retail list price for phonograph records (other than for records where the manufacturer's suggested retail list price is \$3.79 or less, and other than for singles in plain wrapping or sleeves) and 25% of the suggested retail list price for tapes and cartridges.

(c) Each first party will have an allowance with respect to "free" records, tapes and cartridges actually distributed, regardless of mix, (except for record clubs which are dealt with separately below), of up to 20% of the total records, tapes and cartridges distributed;

(d) With respect to its record clubs, if any, each first party will have an allowance of "free" and "bonus" records, tapes and cartridges actually distributed of up to 50% of the total records, tapes and cartridges distributed by or through the clubs; and with respect to such "free" and "bonus"

Exhibit A.

records, tapes and cartridges distributed by its clubs in excess thereof, each first party will pay the full rate on 50% of the excess of such "free" and "bonus" records, tapes and cartridges so distributed.

5. Schedules of current manufacturer's suggested retail prices for each record in each first party's catalogue shall be furnished by each first party to the Trustee upon the execution and delivery of this Agreement and amendments and additions thereto shall be so furnished as and when established. For the purposes of determining the amounts payable hereunder, such suggested retail prices shall be computed exclusive of any sales or excise taxes on the sale of phonograph records subject to this Agreement. If any first party discontinues the practice of publishing manufacturer's suggested retail prices, it agrees that it will negotiate a new basis for computing payments hereunder which shall be equivalent to those required above.

6. The payments provided for in this Agreement shall be made with respect to the sales of any phonograph record produced from a master record described in paragraph 2 of this Addendum A which take place during the period commencing with the calendar year during which a phonograph record produced from such master record is first released for sale and terminating at the end of the tenth calendar year thereafter. The year of such release shall be counted as the first year of the ten years. (By way of illustration but not limitation, if a phonograph record produced from a master record made pursuant to Phonograph Record Labor Agreement (April 1969), is first released for sale in May, 1969, payments shall be made with respect to sales of said record which take place during the calendar years 1969-1978 inclusive. If said phonograph record is first released for sale in February, 1972, payments shall be made with respect to sales of said record which take place during the calendar years 1972-1981 inclusive.)

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7. The report to the Trustee required in paragraph 2 (c) of the main text of this Agreement shall show the number of phonograph records, tapes and other devices subject to payment under this Agreement which have been sold during the period to be covered by the report, the dates of initial release for sale thereof, the manufacturer's suggested retail price thereof and of the component units thereof, and the excise and sales taxes, if any, borne by the first party thereon.

8. Despite anything to the contrary contained in this agreement, it is specifically agreed that the first party reserves the right by written notice to the Trustee effective with the effective date of any termination, modification, extension or renewal of the said Phonograph Record Labor Agreement (August, 1973) to terminate or change any of the terms of this Phonograph Record Trust Agreement, but no such termination or change shall be effective unless the first party has secured the prior written approval thereto by the Federation referred to in the main text hereof. It is agreed however, that no such change may have any retroactive effect.

Exhibit A.

ADDENDUM A

1. For the purposes of this Agreement, the terms "phonograph record" and "record" shall include phonograph records, wire or tape recordings, or other devices reproducing sound, and the term "master record" shall include any matrix, "mother," stamper or other device from which another such master record, phonograph record, wire or tape recording, or other device reproducing sound, is produced, reproduced, pressed or otherwise processed.

2. Each First Party shall make payments to the Administrator in the amounts computed as stated below, with respect to the sale during the period specified in 6 below of phonograph records, produced from master records containing music which was performed or conducted by musicians covered by, or required to be paid pursuant to, a collective bargaining agreement with the Federation known as Phonograph Record Labor Agreement (August, 1973) (but specifically excluding services solely as arranger, orchestrator or copyist) where such phonograph records are sold during said period by such First Party, or, subject to the provisions of paragraph 1(e) of the main text of this Agreement, by purchasers, lessees, licensees, transferees, or other users deriving title, lease, license, or permission thereto, by operation of law or otherwise, by, from or through such First Party.

3. The payments to the Administrator shall be computed as follows:

(a) .6% of the manufacturer's suggested retail price of each record, when such price does not exceed \$3.79.

(b) For records where the manufacturer's suggested retail price exceeds \$3.79, .58% of the manufacturer's suggested retail list price and for wire or tape recordings or other devices .5% of the manufacturer's suggested retail price.

With respect to a phonograph record produced after August 1, 1973, both from master records described in paragraph 2 of this Addendum A and recorded under Phonograph Record Labor Agreement (August, 1973) for which payments are due hereunder and from other master records, First Party shall

Exhibit A.

pay that proportion of the amount provided for above as the number of such master records recorded under said Agreement bears to the total number of master records embodied in the phonograph record.

4. For the purpose of computing payments to the Administrator,

(a) Each First Party will report 100% of net sales;

(b) Each First Party will have a packaging allowance in the country of manufacture or sale of 15% of the suggested retail list price for phonograph records (other than for records where the manufacturer's suggested retail list price is \$3.79 or less, and other than for singles in plain wrapping or sleeves) and 25% of the suggested retail list price for tapes and cartridges.

(c) Each First Party will have an allowance, with respect to "free" records, tapes and cartridges actually distributed, regardless of mix, (except for record clubs which are dealt with separately below), of up to 20% of the total records distributed;

(d) With respect to its record clubs, if any, each First Party will have an allowance of "free" and "bonus" records, tapes and cartridges actually distributed of up to 50% of the total records, tapes and cartridges distributed by or through the clubs; and with respect to such "free" and "bonus" records, tapes and cartridges, distributed by its clubs in excess thereof, each First Party will pay the full rate on 50% of the excess of such "free" and "bonus" records, tapes and cartridges so distributed.

5. Schedules of current manufacturer's suggested retail prices for each record in each First Party's catalogue shall be furnished by each First Party to the Administrator upon the execution and delivery of this Agreement and amendments and additions thereto shall be so furnished as and when established. For the purposes of determining the amounts payable hereunder, such suggested retail prices shall be computed exclusive of any sales or excise taxes on the sale of phonograph records subject to this Agreement. If any First Party discontinues the practice of publishing manufacturers' suggested re-

Exhibit A.

tail prices, it agrees that it will negotiate a new basis for computing payments hereunder which shall be equivalent to those required above.

6. The payments provided for in this Agreement shall be made with respect to the sales of any phonograph record produced from a master record described in paragraph 2 of this Addendum A which take place during the period commencing with the calendar year during which a phonograph record produced from such master record is first released for sale and terminating at the end of the tenth calendar year thereafter. The year of such release shall be counted as the first year of the ten years. (By way of illustration but not limitation, if a phonograph record produced from a master record made pursuant to Phonograph Record Labor Agreement (April, 1969), is first released for sale in May, 1969, payments shall be made with respect to sales of said record which take place during the calendar years 1969-1978 inclusive. If said phonograph record is first released for sale in February, 1972, payments shall be made with respect to sales of said record which take place during the calendar year 1972-1981 inclusive.)

7. The report to the Administrator required in paragraph 1(c) of the main text of this Agreement shall show the number of phonograph records, tapes and other devices subject to payment under this Agreement which have been sold during the period to be covered by the report, the dates of initial release for sale thereof, the manufacturer's suggested retail price thereof and of the component units thereof and the excise and sales taxes, if any, borne by the First Party thereon.

8. Despite anything to the contrary contained in this Agreement, it is specifically agreed that the First Party reserves the right, by written notice to the Administrator, effective with the effective date of any termination, modification, extension or renewal of the said Phonograph Record Labor Agreement (August, 1973), to terminate or change any of the terms of this Special Payments Fund Agreement, but no such termination or change shall be effective unless the First Party has secured the prior written approval thereto by the Federation. It is agreed, however, that no such change may have any retroactive effect.

Exhibit A.

9. Anything to the contrary herein contained notwithstanding, it is agreed that if the Phonograph Record Labor Agreement (August, 1973), or any successor agreement is not renewed or extended at or prior to its expiration date, and if a work stoppage by members of the Federation ensues, then all payments otherwise due to the Administrator based on sales for the period of such work stoppage, and only for such period, shall not be made to the Administrator. In lieu thereof, equivalent amounts shall be paid by each First Party as an additional contribution to the Trustee under the Phonograph Record Trust Agreement (August, 1973) unless otherwise determined as a condition for the cessation of such work stoppage.

Exhibit B, Letter May 1974.

EMI RECORDS 20 Manchester Squ.
London W1A 1ES
Telephone 014364438
Telex 22643
Telegrams Emirscord
London AI
Cables Emirscord
London AI

Phil Spector Records Inc.
c/o Mr. Martin J. Machat
Machat & Kronfeld
30th Floor, Paramount Building
1501 Broadway
New York NY 10036

May 1974

Dear Sirs:

Whereas you have represented to us that you are exclusively entitled to the services as a record producer of Phil Spector, now this letter is to confirm the agreement between this Company and yourselves whereby you have made the services of Phil Spector available to us as a record producer for the purpose of producing performances by John Lennon of the titles listed in the Schedule hereto. In consideration of Phil Spector rendering such services, we now agree with you as follows:

1. UNITED KINGDOM

We will pay to you a royalty in respect of 90% of records wholly comprised of titles in the Schedule hereto manufactured and sold by us in the United Kingdom of 3% (three per cent) of the recommended retail selling price in the United Kingdom of such records (less any tax or taxes levied or which have to be recovered as part of the selling price and less an allowance for packaging of 6½% for a single-fold album or tape record and 10% for a double-fold album of such recommended retail selling price).

2. USA/CANADA

We will pay to you a royalty in respect of 100% of net sales of records wholly comprised of titles in the Schedule hereto manufactured and sold in the United States of America and Canada by any person firm or corporation authorized by ourselves. Such

Exhibit B.

royalty will be in the sum of 3% (three per cent) of 90% (ninety per cent) of the Bare Record Price. By way of illustration only of such calculation at certain United States current (ex-tax) prices; which prices and packaging allowance may vary from time-to time:-

	<u>Recommended retail price</u>	<u>Packaging deduction</u>	<u>Bare Record Price</u>	<u>B.R. Price</u>	<u>3%</u>
Single- fold album	\$6.98	54c	\$6.44	\$5.796	17.388c
Double- fold album	\$6.98	71c	\$6.27	\$5.643	16.929c
Cassette	\$6.98	\$1.98	\$5.00	\$4.50	13.5c
8-Track Cartridge	\$6.98	\$1.98	\$5.00	\$4.50	13.5c

There will be no packaging deduction for 45 r.p.m. single records where the Bare Record Price will be the recommended price.

3. REST OF THE WORLD

We will pay to you a royalty in respect of 90% of records wholly comprised of titles in the Schedule hereto manufactured and sold by us outside the United Kingdom, the United States of America and Canada of 2% (two per cent) calculated on the recommended retail selling price of such records in the country of manufacture (less any tax or taxes levied or which have to be recovered as part of the selling price and less an allowance for packaging of $6\frac{1}{2}\%$ for a single-fold album or tape record and 10% for a double-fold album of such recommended retail selling price).

Exhibit B.

4. TAPE RECORD

Royalty payable in respect of sales of tape records outside the United States and America and Canada shall be calculated and payable on the recommended retail selling price as in our opinion is or would be appropriate for a disc record containing the same material. Royalty payable in respect of sales of tape records in the United States of America and Canada shall be calculated and payable on the Bare Record Price in accordance with Clause 2 hereof.

5. In the case of records sold anywhere in the World comprising only in part titles in the Schedule hereto we will pay to you a proportionate royalty in such proportion as the number of such titles bears to the total number of titles comprising such record except that for 45 r.p.m. single records bearing on only one side thereof a title listed in the Schedule thereto a full royalty will be paid as appropriate under Clauses 1 and 2 and 3 hereof but less an amount equal to the Producer's Royalty payable by us in respect of the other side of the said 45 r.p.m. single record.
6. In respect of records sold through any form of club operation or other group of persons (calculated on the price to such club members or group) and in respect of records sold through any low price series (which shall mean records selling at less than 50% of an equivalent full price record) the rates of royalty which shall be payable will be one-half of those set forth above (as appropriate).

Exhibit B.

7.

The accounting and payment of royalty due hereunder shall be made by us (based on the latest information received by us at the end of each period) within 60 days of the end of each Calendar quarter. You may at your expense appoint an independent qualified accountant to examine our books and records insofar as such books and records pertain to monies due to you hereunder. Such inspection shall be made on ten day prior written notice but not more than once in any period of 12 months. As you have instructed us, payment of royalty due to you hereunder in respect of sales of records, in the United States of America and Canada will be made to:

Phil Spector Records Inc.
c/o Mr. Martin J. Machat
Machat & Kronfeld
30th Floor
Paramount Building
1501 Broadway
New York
N.Y. 10036

Payment of Royalty due to you hereunder in respect of sales of records in the rest of the World will be made to:

Interglobal Creative Management Limited
7 Townsend House
22/25 Dean Street
London W.1.

Payments to Phil Spector Records Inc. and to Interglobal Creative Management Limited respectively and their receipt therefor shall be a full discharge by us of our obligations to make payments hereunder. In respect of royalty due in respect of sales of records in the United States of America and Canada we shall remit sums to Phil Spector Records Inc. as above within 2 days of receipt by us of such sums from our associate Capitol Records

Exhibit B.

Inc. and such sums shall be remitted by us at the same exchange rate from time to time as the such sums received by us. In respect of sales of records in the United States of America and Canada our royalty statements and payments shall incorporate a reasonable percentage by way of reserve against returns of records and such percentage will usually be in the sum of 20% in the first accounting period after release reducing to 10% thereafter.

8. We will reimburse you in respect of recording costs for the titles listed in the Schedule hereto upon receipt by us of bills and accounts as evidence of such costs and such sum to be reimbursed is currently estimated at US \$93000.
9. The copyright in recordings of the titles listed in the Schedule hereto shall vest solely with us.
10. Your right to receive royalty payments hereunder shall be for the copyright life in the United Kingdom of the titles listed in the Schedule hereto.
11. We shall include or cause to be included on the liner notes and label of records (including tape records) wholly comprised of titles in the Schedule hereto a suitable credit to Phil Spector substantially as follows: "Produced by Phil Spector".
12. John Lennon is exclusively contracted to us for recording purposes and neither yourselves nor Phil Spector shall take any action or authorize any action which might jeopardize such contract or result in or lead to any breach or potential breach of such contract whether in whole or in part.

Exhibit B.

13. Royalty due to you hereunder shall not be cross-collateralised with sums due to Phil Spector from us or with any claims against Phil Spector by us under any other Agreement whether prior to or subsequent to the date hereof.

Kindly record your formal acceptance of the above by signing the duplicate copy of this letter and returning it to us.

Yours faithfully
EMI RECORDS LTD.
(Signature)

THE SCHEDULE

BONIE MORONY
ANGEL BABY
TO KNOW HER IS TO LOVE HER
HERE WE GO AGAIN
SINCE MY BABY LEFT ME
YOU CAN'T CATCH ME
BE MY BABY
SWEET LITTLE SIXTEEN

READ AND AGREED

S/ ..Martin.J..Machet.....
S/ Secretary

PHIL SPECTOR RECORDS INC.

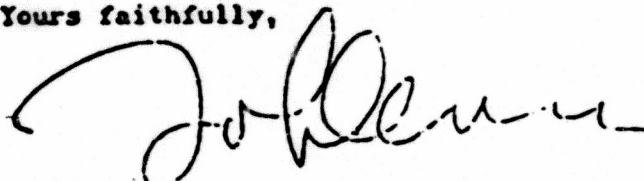
240a
Exhibit B.

EMI Records Limited
20 Manchester Square
London W.1.

Dear Sirs,

I refer to the letter agreement of today's date which I have seen and approve between yourselves and Phil Spector Records Inc. relating to the work done or to be done by Phil Spector in producing the titles listed in the Schedule hereto and in consideration of your entering into that agreement I confirm that I hereby irrevocably authorise and permit you to deduct from royalty statements and remittances sent to me in respect of the titles listed in the Schedule hereto a sum equal to one-half of all sums paid by you from time-to-time to Phil Spector Records Inc. and to Interglobal Creative Management Limited under the terms of the above-mentioned letter agreement.

Yours faithfully,



John Lennon

THE SCHEDULE

BONIE MORONY
ANGEL BABY
TO KNOW HER IS TO LOVE HER
HERE WE GO AGAIN
SINCE MY DADY LEFT ME
YOU CAN'T CATCH ME
BE MY DADY
SWEET LITTLE SIXTEEN
JUST BECAUSE

Read and Agreed :
S. Marius Gray, Receiver.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

BIG SEVEN MUSIC CORP. and	:	
ADAM VIII, LTD.,	:	
	:	<u>A F F I D A V I T</u>
Plaintiffs,	:	
	:	
-against-	:	75 Civ. 1116 (TPG)
	:	
JOHN LENNON, APPLE RECORDS, INC.,	:	
HAROLD SEIDER, CAPITOL RECORDS,	:	
INC. and EMI RECORDS LIMITED,	:	
	:	
Defendants,	:	
	:	
-and-	:	
	:	
MORRIS LEVY,	:	
	:	
Additional Defendant	:	
on Counterclaim.	:	

-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HARVEY ZUCKER, being duly sworn, deposes and says:

1. I am the comptroller of Adam VIII, Ltd. and am familiar with the terms of the standard contract which all major record companies have entered into with the American Federation of Musicians ("AFM").

2. Under the standard AFM contract, all record manufacturers must contribute to both the Phonograph Record Manufacturers' Special Payments Fund Agreement and the Phonograph Record Trust Agreement the following sums for each record and tape sold that has a manufacturers' suggested retail list price ("list price") in excess of \$3.79:

A. In the case of records, .58% of the
list price less a packaging allowance
of 15%; and

Exhibit C.

B. In the case of tapes, .5% of the list price less a packaging allowance of 25%.

3. This means that the payments that would have to be paid to each fund for every record sold that had a list price of \$6.98 would be \$.0344114 and \$.029925 for each tape that had a list price of \$7.98.

4. Attached hereto as Exhibit "A" is a schedule that I prepared which shows the AFM payments that would be due for each 50,000 records sold that have list prices of \$5.98 or \$6.98 and for each 50,000 tapes sold that have list prices of \$6.98 or \$7.98.

5. If one assumes that of the additional 100,000 units of Rock 'n Roll which the Court held Capitol would have sold but for Roots, half would be records and half tapes, then the total amount of AFM payments that would be due on their sale would be \$6,433.64.

6. Although Plaintiffs' Exhibit 241A does not reflect AFM payments, either Capitol or Apple would have had to make AFM payments totalling \$19,034.49 on the 342,000 copies of Rock 'n Roll sold. (See Exhibit "B" annexed hereto.)

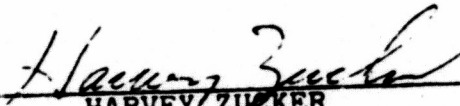
7. If the list price of Rock 'n Roll were one dollar higher, the AFM payment would have been \$22,003.05 (Exhibit "B").

8. Consequently, the additional AFM expense that either Capitol or Apple would have incurred had the album been priced one dollar higher would have been \$2,968.56 (Exhibit "B").

Exhibit C.

9. Therefore, it is respectfully submitted that the damages awarded defendants should be reduced by \$9,402.20

(\$6,433.64 plus \$2,968.56) to reflect the cost of AFM payments that would be due if Rock 'n Roll sold additional units or at a higher price.


HARVEY ZUCKER

Sworn before me this

28th day of July, 1976

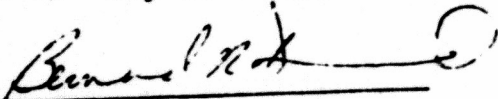

BERNARD R. DIAMOND
JULIC, State of New York
No. 31-450633
Qualified in New York
Commission Expires March 28, 1977

Exhibit C.

RECORDS

5.98

6.98

UNITS

50000

50000

RETAIL SALES VALUE

299000

349000

LESS: PRELIMINARY ALLOW.

74250

52250

254150

296650

RATE: .58%

147407

172057

TIMES 2 FUNDS

x 2

x 2

294814

344114

TAPE

6.98

7.98

UNITS

50000

50000

RETAIL SALES VALUE

349000

349000

LESS: PRELIMINARY ALLOW.

87250

99750

261750

299250

RATE: .5%

130875

144625

TIMES 2 FUNDS

x 2

x 2

261750

299250

SUMMARY

RECORDS

294814

344114

TAPE

261750

299250

TOTAL

556564

643364

	RECORDS	TAPAS	
	5.98	6.98	
RETAIL SALES VALUE	59800	69800	
LESS: PACKAGING ALLOWANCE	8970	1,7450	
	50830	52350	
RATE	.0058	.005	
	.0294514	.026175	
TWO FUNDS	x 2	x 2	
	.0589028	.05235	
TIMES 171,000 UNITS EACH	1,008264	895185	1903449
	6.98	7.98	
RETAIL SALES VALUE	69800	79800	
LESS: PACKAGING ALLOWANCE	1,0470	1,9950	
	59330	59850	
RATE	.0058	.005	
	.0349114	.029925	
TWO FUNDS	x 2	x 2	
	.0688228	.05985	
TIMES 171,000 UNITS EACH	1,176870	1,023435	2200305
DIFFERENCE			296856

EXHIBIT "B"

Exhibit D, Affidavit of Abraham I. Massler.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BIG SEVEN MUSIC CORP. and :
ADAM VIII, LTD., :
 :
Plaintiffs, :
 :
-against- :
 :
JOHN LENNON, APPLE RECORDS, INC., : AFFIDAVIT
HAROLD SEIDER, CAPITOL RECORDS, :
INC. and EMI RECORDS LIMITED, : 75 Civ. 1116 (TPG)
 :
Defendants, :
 :
-and- :
 :
MORRIS LEVY, :
 :
Additional Defendant :
on Counterclaim. :

----- x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ABRAHAM I. MASSLER, being duly sworn, deposes and says:

1. I am the President of Bestway Products Inc. ("Bestway"), a major independent manufacturer of phonograph records. Among the record companies for whom Bestway presses records are London Records, Dover Publications and Golden Records.

2. At the request of Morris Levy, the President of Big Seven Music Corp. and Adam VIII, Ltd., I have reviewed Capitol Records Inc.'s ("Capitol") schedule of costs, as set forth on Plaintiffs' Exhibits 241 and 241-A, copies of which are attached hereto as Exhibits A and B respectively, and have compared Capitol's costs for manufacturing an album and jacket with the costs of my company and of other companies with which I have been associated or had business relations in the thirty years I have been in the music business.

Exhibit D.

3. Based on this comparison, it is my opinion that Capitol's costs are materially understated.

4. Capitol's documents reflect manufacturing costs of \$.40 per album which, I am advised, Capitol's director of financial planning and analysis, Harold Posner, testified included the cost of the jacket.

5. For albums and jackets of comparable quality to Capitol's, our costs, which I believe to be closely in line with those of major record manufacturers, range between \$.48 and \$.49, of which the cost of the record and the jacket is \$.38 to \$.39 and \$.10 respectively.

6. Capitol's stated costs are therefore between 20% and 22.5% below the industry standard, a variation that is so significant as to lead me to seriously doubt the accuracy of Capitol's figures.

A. J. H. Massler
ABRAHAM I. MASSLER

Sworn to before me this

27th day of July, 1976.

Bernard R. Diamond

BERNARD R. DIAMOND
NOTARY PUBLIC, State of New York
No. 31-4506337
Qualified in New York County
Commission Expires March 26, 1977

	MEMO	11/10/76	2/11/77	Per Unit
INVOICE SALES	USE 12 A	\$ 3.06	\$ 3.54	.48
CASH DISCOUNT Allow	B/A % SALES	.05	.06	<.0
PROV. FUTURE RETURNS	✓ ✓	<.04>	<.05>	.0
NET SALES		3.05	3.53	.48
STD MFG COST	A	.40	.40	
PACKAGING DEVIATION	A - E	<.02>	.04	<.0
PRODUCTION VARIANCE	B/EA % SMC	<.04>	<.04>	
TRANSP.	BF / AF WEIGHT	.08	.08	
MECHANICALS	A (24.0 + 3.5)	.27	.27	
ATTN	A	0	0	
CO-OP ADV	B/A % SALES	.20	.23	<.0
PROV FUTURE RETURNS	B/A B = % SALES A = % PROV	.01	.01	
PRESSING FEE	A	.11	.15	<.0
ROYALTY	A (562 - 3.3)	.53	(47.5 - 3.54) .64	<.0
INTERA	A	0	0	
RECORDING	A - Fixed \$6.3	-	-	
ALB PACKAGING	A - ✓ 4.2	-	-	
DIRECT MDS	A - ✓	-	-	
Promo Product	A - Fixed	-	-	
✓ - VAR	BF / AF - Per unit	.03	.03	
OBSOLETE	AF - Fixed	-	-	
✓ - VAR	EA % SMC	.16	.16	
PROV DOWNSIDE ACCT	B/A % SALES (B=1.02 A=0.32)	0	0	
SALES COMMISSION	B/A ✓	.03	.03	
WHSE & DIST	AF Fixed	-	-	
✓ - VAR	BF / AF - Per unit	.06	.06	
TOTAL VAR COSTS		1.82	2.06	<.0
PROFIT BEFORE		\$1.23	\$1.47	
Fixed Costs & Overhead				

241A

LENNON ROCK & ROLL ALBUM PROJECTED PER UNIT PROFITABILITY THRU 2/76 (BEFORE FIXED COSTS & OVERHEAD) - 0.00

METHOD	USED	342,000 UNIT		342,000 UNIT		PROFIT IMPACT
		UNIT	TTL	UNIT	TTL	
PRICE SALES	A	3.06	1047	3.54	1211.7	164
CASH DISCOUNT & ALLOW	B/A % SALES	.05	17.2	.06	200	(.01)
PROV. FUTURE RETURNS	✓	<.04>	<131>	<.05>	<152>	.01
NET SALES		3.05	1042.9	3.53	1211.7	168.8
STD MFG COST	A	.40	136.9	.40	136.9	0
PACKAGING DEVIATION	A-E	<.02>	<7.1>	.04	12.0	<10.5>
PRODUCTION VARIANCE	B/E A % SMC	<.04>	<15.1>	<.04>	<15.1>	0
TRANSP.	BF / AF WEIGHT	.08	25.5	.08	25.5	0
MECHANICALS	A (24.0 + 3.5)	.27	94.0	.27	94.0	0
AFM	A	0	0	0	0	0
CO-OP ADV	B/A % SALES	.20	67.0	.23	77.2	<.03>
PROV FUTURE RETURNS	B/A B = % SALES A = % PROF	.01	4.8	.01	5.3	0
PRESSING FEE	A	.11	38.7	.15	51.7	<.04>
ROYALTY	A (56.8 - 3.8)	.53	172.5	.64	219.0	<.11>
AFTRA	A	0	0	0	0	0
RECORDING	A - FIXED \$6.3	-	6.3	-	6.3	0
ALB PACKAGING	A - ✓ 4.2	-	4.2	-	4.2	0
DIRECT MDSE	A ✓	-	3.6	-	3.6	0
PROMO PRODUCT	A - FIXED	-	0.03	-	0.03	0
OBsolescence	BF / AF - PER UNIT	.03	9.8	.03	9.8	0
AF - FIXED	AF - FIXED	-	3.9	-	3.9	0
EA SMC	EA SMC	.16	55.1	.16	55.1	0
PROV Doubtful Accts	B/A % SALES (B = .02 A = 0.12)	0	0	0	0	0
SALES Commission	B/A ✓	.03	8.1	.03	10.0	0
WHSE & DUT	AF FIXED	-	0.04	-	0.04	0
VAR	BF / AF - PER UNIT	.06	21.8	.06	21.8	0
TOTAL VAR COSTS		\$1.82	\$173.5	\$2.06	\$203.7	24
FIXED COSTS			\$57.0		\$57.0	0
PROFIT BEFORE		\$1.23	\$362.6	\$1.47	\$445.7	24
Fixed Costs & OVERHEAD (S.G. & A)			\$64.00		\$64.00	0
Apple 66% v. 74% = 17%			61%		61%	0

Exhibit E, Affidavit of Charles J. Sutton.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

BIG SEVEN MUSIC CORP. and ADAM :
VIII, LTD., :

Plaintiffs, :

AFFIDAVIT

-against- :

JOHN LENNON, APPLE RECORDS, INC., :
HAROLD SEIDER, CAPITOL RECORDS, :
INC. and EMI RECORDS LIMITED, :

75 Civ. 1116 (TPG)

Defendants, :

-and- :

MORRIS LEVY, :

Additional De-
fendant on :
Counterclaim. :

- - - - - x

STATE OF NEW JERSEY)
: ss.:
COUNTY OF UNION)

CHARLES J. SUTTON, being duly sworn, deposes and says:

1. I am the President of Sutton Distributors Inc., a New Jersey corporation.

2. Sutton Distributors purchases manufacturer's close-outs and overstocks from several major record companies in the United States, including on occasion from Capitol Records, Inc. Normally manufacturers do not sell such merchandise until at least six months after the records are initially released.

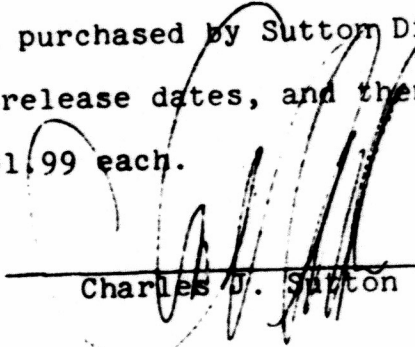
3. Sutton Distributors then sells these records to major retail chains and to other distributors across the United States.

Exhibit E.

4. Sutton Distributors also markets these records through subsidiaries which operate retail record stores in New York State and New Jersey under the trade name of Jimmy's Music World.

5. Manufacturer's overstock and deleted records are normally sold for \$1.99 at Jimmy's Music World and comparable record stores. Jimmy's Music World also sells current merchandise at \$3.99 and \$4.99 per album.

6. Defendants' Exhibits CI 1-4, which are four records on the Adam VIII label which each have manufacturer's suggested retail prices of \$3.98, were all purchased by Sutton Distributors at least six months after their release dates, and then marketed through Jimmy's Music World at \$1.99 each.


Charles D. Sutton

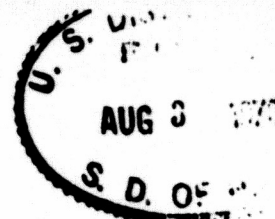
Sworn to before me this

22 day of April, 1976.


LOUIS W.
NOTARY PUBLIC
My Comm. expires
AUGUST 20, 1976

LOUIS W.
NOTARY PUBLIC
My Comm. expires
AUGUST 20, 1976

Affidavit of Howard P. Roy in
Opposition to Motion to Amend
Findings or for a New Trial.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x



BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

AFFIDAVIT IN OPPOSITION
TO MOTION TO AMEND
FINDINGS OR FOR A
NEW TRIAL

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS LIMITED,

75 Civ. 1116 (TPG)

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss:

HOWARD P. ROY, being duly sworn, deposes and says:

1. I am associated with Marshall, Bratter, Greene, Allison & Tucker, attorneys for defendant, John Lennon, and I submit this affidavit in opposition to the motion of plaintiff, Adam VIII, Ltd., and defendant on counterclaim, Morris Levy (hereinafter "Adam VIII and Levy") to modify the Court's findings of fact and conclusions of law with respect to defendants' counterclaims or for a new trial.

2. Capitol Records, Inc. ("Capitol"), will be submitting a comprehensive memorandum in opposition to Adam VIII and Levy's

Affidavit of Howard P. Roy.

instant motion, and, accordingly, to avoid unduly burdening the Court, the scope of this affidavit will respond to only some of the matters raised on Adam VIII and Levy's motion.

Pressing and Jacket Costs

3. Alan Kanzer, in his affidavit sworn to July 30, 1976, submitted in support of the motion ("Kanzer Affidavit"), seeks to create the impression that Adam VIII and Levy were somehow unfairly caught by surprise when faced with the damage computations contained in Plaintiffs' Exhibit 241A. While it is correct that defendants did not furnish damage computations to Adam VIII and Levy during discovery (Kanzer affidavit, ¶14), Mr. Kanzer neglects to note that neither Adam VIII nor Levy requested such information.

4. None of the numerous interrogatories served upon the defendants requested the details of defendants' damage claims, and plaintiffs' and Levy's document demands, keyed as they were to the interrogatories, likewise omitted to call for the production of Capitol's books and records of account or any other similar financial data.

5. Thus, if Adam VIII and Levy were unprepared to deal with the evidentiary support for defendants' counterclaims, it was a predicament of their own making for which defendants bear no responsibility. As the Court properly observed during trial:

"... if we had a pretrial on all of this you wouldn't be in the position in court of inquiring about the costs. This would have been explored in pretrial and probably stipulated subject to rulings of law." (Tr. 2934)

Affidavit of Howard P. Roy.

6. In any event, Mr. Schurtman was afforded the opportunity to examine Capitol's financial data (Tr. 2938) and the Court further indicated that it would permit the taking of Mr. Posner's deposition (Tr. 2935).

7. Having rested on defendants' counterclaim without putting in any evidence in rebuttal, and having been offered the opportunity to conduct a deposition in the middle of trial -- which offer was never pursued -- it is unconscionable for Adam VIII and Levy to now attempt to open the record for the admission of evidence which could have been secured and introduced prior to the Court's decision on April 8.

8. No reason, much less a credible one, is offered to explain why Abraham Massler was not consulted prior to trial (or at least prior to April 8), rather than "[s]ubsequent to trial" (Kanzer Affidavit, ¶18); nor is any excuse offered to explain why Morris Levy, a man with many years of experience in the record industry, could not and did not testify with respect to matters which he now seeks to raise by post-trial motion.

Spector Royalties

9. The existence of the Spector royalty agreement, as Mr. Kanzer points out (Kanzer Affidavit, ¶24), is a fact which was not concealed from either Adam VIII, Levy, or the Court. As this Court observed at the hearing on July 23rd:

"The matter of the Spector expenses has been in this case from Day One. Phil Spector is one of the first

Affidavit of Howard P. Roy.

names that I ever heard in connection with this case, aside from the names of the parties." (Tr. 11)

Furthermore, the EMI-Spector agreement, and the companion Lennon letter (Exhibit "B" to Kanzer Affidavit), are documents which were produced for Adam VIII and Levy during discovery, months before trial.

10. At the July 23rd hearing the Court, in colloquy on this point with Mr. Kanzer, cogently summarized the matter of the Spector royalty as follows:

"During the trial on the counterclaims, there was ample opportunity, and this is almost an understatement there was ample opportunity to put in whatever evidence you wanted to put in about expenses of Capitol or savings of Capitol due to circumstances that occurred and any and all evidence of that kind.

"Your clients rested. You rested on behalf of your clients on those counterclaims.

"After the evidence was put in and before my decision, there was some space of days prior to an oral argument.

"So, if you had any second thoughts, there was time then to do that. To start talking now about putting additional evidence in, three months after that decision, there just cannot be an excuse for that." (Tr. 11)

11. The parenthetical citations to the trial transcript contained in paragraph 24 of the Kanzer Affidavit clearly demonstrate that the Spector royalty is a subject which arose early and often during the trial. Adam VIII and Levy, though challenged by the Court to do so, have not on the instant motion offered any reason for their failure to raise this question sooner. Considerations of fairness and orderly judicial procedure mandate the denial of Adam VIII and Levy's request to offer additional matters into evidence at this late date.

Affidavit of Howard P. Roy.

Jimmy's Music World

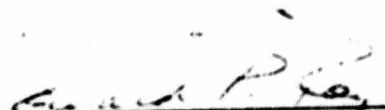
12. The matter of the price at which Adam VIII records are or were sold by Jimmy's Music World, is one which was properly characterized by the Court as "a piece of minutia." This Court's opinion, rendered in open court on April 8, makes clear that consideration was given to Adam VIII and Levy's argument that the \$4.98 price of the "Roots" album was not subject to discounting (Tr. 3464). Nonetheless, this Court held:

"Judging Capitol's actions from the standpoint of the time in which these actions were taken I must conclude that a record company such as Capitol would be justifiably concerned about maintaining a \$6.98 suggested retail price in the face of Levy's \$4.98 price." (Tr. 3464)

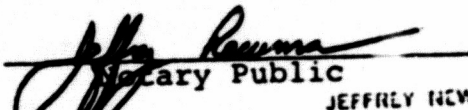
13. Moreover, the arguments contained in the Kanzer Affidavit and the matters set forth in the affidavit of Charles J. Sutton (Kanzer Affidavit Exhibit "E") were raised by Mr. Schurtman at the oral argument on April 8 (Tr. 3426-3427). Thus, so much of Adam VIII and Levy's motion as deals with the discounting of the "Roots" \$4.98 selling price is nothing more than an attempt to reargue a matter fully litigated and argued and, most importantly, fully considered by the Court in rendering its decision.

Affidavit of Howard P. Roy.

By reason of the foregoing, it is respectfully submitted that Adam VIII and Levy's motion to amend the findings or for a new trial should be denied.


Howard P. Roy

Sworn to before me this
3rd day of August, 1976


Notary Public

JEFFREY NEWMAN
Notary Public, State of New York
No. 31-2880270
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

75 Civ. 1116
(TPG)

Plaintiffs,

-against-

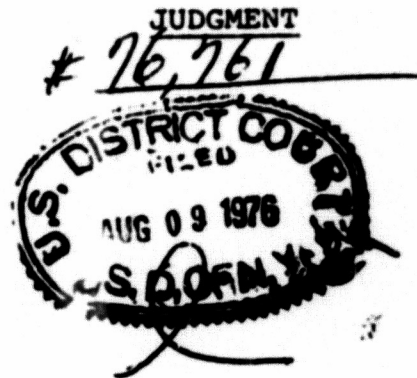
JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS, LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaims.



-----X
This action came on for trial before the Court, Honorable
Thomas P. Griesa, District Judge, presiding,

And the issues having been duly tried and decisions having
been duly rendered and filed: (a) in favor of the defendants, and
each of them, on February 20, 1976, (i) with respect to Count II
(Breach of the October 1974 Agreement) and (ii) with respect to
all other allegations in the complaint as amended to said date,
said decision being fully dispositive of all such other allega-
tions; (b) with respect to the counterclaims of the defendants
John Lennon, Capitol Records, Inc., EMI Records, Limited, and
Apple Records, Inc., as amended during trial, in favor of said
defendants, and each of them, except for a monetary recovery for
the defendant Apple Records, Inc., on April 8, 1976; and (c) with
respect to the claim asserted by Big Seven Music Corp. by amend-
ment during trial on February 27, 1976, for breach of the Come
Together Settlement Agreement, in favor of Big Seven Music Corp.

MICROFILM

AUG 10 1976

Judgment #76,761.

with respect to its claim for compensatory damages, and in favor of John Lennon with respect to Big Seven Music Corp.'s claims for punitive damages and specific performance, on July 13, 1976,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Except for the relief granted to Big Seven Music Corp. as to the Come Together Settlement Agreement set forth in paragraph 6 hereof, the plaintiffs Big Seven Music Corp. and Adam VIII, Ltd. take nothing with respect to Counts I through VIII of the amended complaint, as amended during trial, and that the claims asserted in each of said Counts by Big Seven Music Corp. and Adam VIII, Ltd., and the claims for punitive damages and specific performance asserted by Big Seven Music Corp. with respect to the Come Together Settlement Agreement be, and the same hereby are, dismissed on the merits, and that neither Big Seven Music Corp., Adam VIII, Ltd. nor the additional defendant on counterclaims, Morris Levy, recover their costs of this action.

2. On its counterclaims and on each of them, the defendant Capitol Records, Inc. recover of the plaintiff Adam VIII, Ltd. and the additional defendant on counterclaims Morris Levy, jointly and severally, \$227,000 in compensatory damages and \$10,000 in punitive damages, for a total award of damages equal to \$237,000, with interest on the \$227,000 from May 15, 1975 at the rate of 6% per annum as provided by law.

3. On its counterclaims and on each of them, the defendant EMI Records, Limited recover of the plaintiff Adam VIII, Ltd. and the additional defendant on counterclaims Morris Levy, jointly and

Judgment #76,761.

severally, \$27,500 in compensatory damages and \$10,000 in punitive damages, for a total award of damages equal to \$37,500, with interest on the \$27,500 from August 1, 1975 at the rate of 6% per annum as provided by law.

4. On his counterclaims, and on each of them, the defendant John Lennon recover of the plaintiff Adam VIII, Ltd. and the additional defendant on counterclaims Morris Levy, jointly and severally, \$135,300 in compensatory damages (\$35,000 of said amount being awarded on John Lennon's counterclaim under Section 51 of the New York Civil Rights Law) and \$10,000 in punitive damages, for a total award of damages equal to \$145,300, with interest on \$100,300 from August 1, 1975 at the rate of 6% per annum as provided by law.

5. Except as set forth in paragraph 8 hereof, defendant Apple Records, Inc. take nothing from plaintiffs or the additional defendant on counterclaims Morris Levy.

6. Plaintiff Big Seven Music Corp. recover of the defendant John Lennon on its claim for breach of the Come Together Settlement Agreement compensatory damages only in the amount of \$6,795 with interest thereon from May 15, 1975, at the rate of 6% per annum as provided by law.

7. Plaintiffs and additional defendant on counterclaims Morris Levy, and each of them, their agents, servants, officers, employees, representatives, assignees, and attorneys are

88 permanently restrained and enjoined from manufacturing, producing, selling or offering for sale, or causing to be manufactured, produced, sold or offered for sale tapes and/or phonograph records or other devices whether or not known, bearing the name, picture or likeness of John Lennon (unless such right is hereafter lawfully acquired in writing), or containing all or part of the musical performances of John Lennon included in an album entitled "John Lennon Sings The Great Rock & Roll Hits - Roots", and they are also hereby ordered to deliver ~~forthwith~~ to Marshall, Bratter, Greene, Allison & Tucker, the attorneys for John Lennon, as custodian for John Lennon, Apple Records, Inc., Capitol Records, Inc. and EMI Records, Limited, all tapes and/or phonograph records entitled "John Lennon Sings The Great Rock & Roll Hits - Roots", record jackets therefor and television and/or radio commercials therefor, manufactured or produced at the direction of Morris Levy and/or Adam VIII, Ltd., together with the tapes, lacquer masters, mothers, stampers and all other parts and devices, and copies thereof, from which same were manufactured or produced, and also the 7 1/2 i.p.s. tape introduced into evidence as Plaintiffs' Exhibits 26A and 26B and the cassette recording introduced into evidence as Plaintiffs' Exhibit 25A, following the completion of all proceedings and/or appeals herein, and to account to the aforesaid defendants within sixty (60) days following delivery of the above materials for the disposition of all other tapes and/or phonograph records, record jackets, parts and devices and television and/or radio commercials manufactured or produced under said title.

Judgment #76,761.

8. Each of the defendants, John Lennon, Apple Records, Inc., Harold Seider, Capitol Records, Inc. and EMI Records, Limited, recover of the plaintiffs Big Seven Music Corp. and Adam VIII, Ltd. and the additional defendant on counterclaims Morris Levy, their respective costs of this action, and that said costs be duly taxed.

Dated at New York, New York this *6th* day of August, 1976.

Thomas P. Griesa

JUDGMENT ENTERED - *8/10/76*
Raymond F. Burghardt
CLERK

Notice of Appeal by Big Seven, Adam VIII
and Levy.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.,
HAROLD SEIDER, CAPITOL RECORDS,
INC. and EMI RECORDS, LIMITED,

Defendants,

-and-

MORRIS LEVY,

Additional
Defendant on
Counterclaim.
----- x

NOTICE OF APPEAL

75 Civ. 1116 (TPG)

RM
SEP 1 3 1976

NOTICE IS HEREBY GIVEN that Big Seven Music Corporation
and Adam VIII, Ltd., plaintiffs above named, and Morris Levy,

George J Grumbach, Jr., Esq.
Cleary, Gottlieb, Steen + Hamilton
One State Street Plaza
New York, New York

Cross Notice of Appeal.

5.00 paid

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

75 Civ. 1116 (TPG)

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.
HAROLD SEIDER, CAPITOL RECORDS, INC.
and EMI RECORDS, LIMITED,

CROSS-NOTICE OF APPEAL

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.

SEP 23 2 54 PM '76
Run

NOTICE IS HEREBY GIVEN that John Lennon, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the final judgment in this action entered on August 10, 1976 as awarded plaintiff Big Seven Music Corp. damages in the amount of \$6,795 with interest thereon from May 15, 1975, at the rate of 6% per annum, and from the

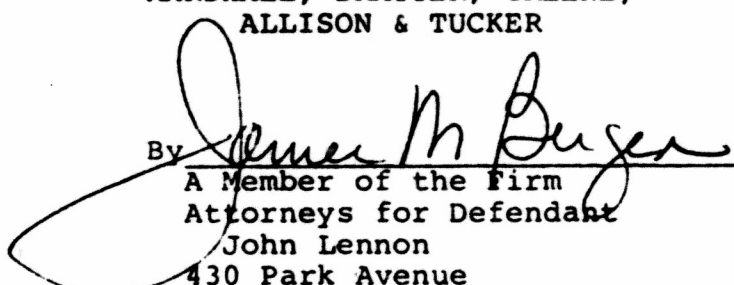
Cross Notice of Appeal.

memorandum decision of District Judge Thomas P. Griesa of
July 13, 1976.

Dated: New York, New York
September 23, 1976

MARSHALL, BRATTER, GREENE,
ALLISON & TUCKER

By


A Member of the Firm
Attorneys for Defendant

John Lennon
430 Park Avenue
New York, New York 10022
(212) 421-7200

11
M. G. Griesa, District Judge

DS. [unclear]
New York City 10017.

Affidavit of James M. Bergen in Support of Motion
for Leave to File a Late Cross Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIG SEVEN MUSIC CORP. and
ADAM VIII, LTD.,

75 Civ. 1116 (TPG)

Plaintiffs,

-against-

JOHN LENNON, APPLE RECORDS, INC.
HAROLD SEIDER, CAPITOL RECORDS, INC.
and EMI RECORDS, LIMITED,

AFFIDAVIT

Defendants,

-and-

MORRIS LEVY,

Additional Defendant
on Counterclaim.



STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JAMES M. BERGEN, being duly sworn, deposes and says:

1. I am a member of the firm of Marshall, Bratter, Greene, Allison & Tucker, attorneys for John Lennon ("Lennon") in the above-entitled action. I was the trial attorney in the District Court and I am the partner responsible for this matter. I make this affidavit in support of Lennon's application pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure for leave to file a cross-notice of appeal, the time to file such cross-notice having expired yesterday, September 22, 1976.

2. Plaintiffs, Big Seven Music Corp. ("Big Seven") and Adam VIII, Ltd. and Morris Levy, the additional defendant on

Affidavit of James M. Bergen.

counterclaim in this action, filed a Notice of Appeal on September 8, 1976 from the final judgment in this action entered on August 10, 1976 and from certain decisions by the District Court. Pursuant to the provisions of Rule 4(a) of the Federal Rules of Appellate Procedure, Lennon's last day to file a cross-notice of appeal was September 22, 1976, "14 days of the date on which the first Notice of Appeal was filed." This past Tuesday and Wednesday (September 21 and 22) I was in Nashville, Tennessee preparing for the trial of a case in the Chancery Court in Tennessee which is scheduled to commence next Monday, September 27, 1976. On Tuesday morning I was advised by telephone in Nashville that Mr. Lennon wished to file a cross-notice of appeal from so much of the judgment entered on August 10th as awarded Big Seven \$6,795 in damages with interest from May 15, 1975 at 6%. In my absence I forgot to request someone in my office to draft and file the cross-notice of appeal and did not realize that I had not done so until I was on my way to my office this morning.

3. I do not believe that the plaintiff, Big Seven will be prejudiced if the Court grants a one-day extension of the time for Lennon to file the cross-notice of appeal since Big Seven is appealing the award of \$6,795 anyway apparently on the grounds that the award should have been higher. The purpose of the rule as to filing notices of appeal is to afford finality of judgments and in this case no part of the judgment is final nor will it be until the conclusion of the appeal filed by Big Seven, Adam VIII, Ltd. and Morris Levy. Therefore, it would not contravene the purpose of the rule to permit Lennon's cross-notice to be filed one day late.

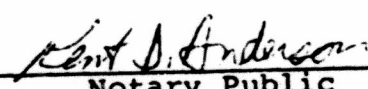
Affidavit of James M. Bergen.

4. I believe that the fact that I was not in my office and was in Nashville preparing for trial when I learned of Lennon's decision to appeal and forgot to tell someone in my office to file the cross-notice is the kind of "excusable neglect" which is contemplated by the last paragraph of Rule 4(a) of the Federal Rules of Appellate Procedure. My client should not be prevented from prosecuting his appeal because of my neglect and I believe that an injustice would result if he is not permitted to file the cross-notice of appeal one day late.

5. I respectfully request that the Court exercise its discretion and grant this application and permit Mr. Lennon's cross-notice of appeal to be filed today.


JAMES M. BERGEN

Sworn to before me this
23rd day of September, 1976.


Notary Public
KENT D. ANDERSON
Notary Public, State of New York
No. 24-4527648
Qualified in Kings County
Term Expires March 30, 1978

United States Court of Appeals
For the Second Circuit

Big Seven Music Corp. and Adam VIII, LTD.,
Plaintiffs-Appellants,

against

John Lennon, Apple Records, Inc., Harold Seider,
Capitol Records, Inc. and EMI Records Limited,
Defendants-Appellees,

and

Morris Levy,
Additional Defendant on Counterclaim-Appellant.

**AFFIDAVIT
OF SERVICE**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Jerry N. Simmons

, being duly sworn, deposes and says that he
is over the age of 18 years, is not a party to the action, and resides
at 25 Elliott Place Bronx, N.Y. 10452
That on Nov. 19, 1976, he served

One Appendix Volume 1-6 and one Exhibit Volume and two Briefs on
behalf of Plaintiffs-Appellants and Additional Defendant on
Counterclaim-Appellant.

On:

Marshall Bratter Greene Allison & Tucker, Esqs.
430 Park Avenue
New York, N.Y. 10022

Cleary, Gottlieb, Steen & Hamilton, Esqs.
One State Street Plaza
New York, N.Y. 10004

by delivering to and leaving same with a proper person or persons in
charge of the office or offices at the above address or addresses during
the usual business hours of said day.

Sworn to before me this
19 day of November, 1976

John V. Desposito
JOHN V. DESPOSITO
Notary Public, State of New York

Qualified in Nassau County
Commission Expires March 30, 1977